

***United States Court of Appeals
for the Second Circuit***



APPENDIX

ORIGINAL

74-1037

United States Court of Appeals

For the Second Circuit.

UNITED STATES OF AMERICA,

Appellee,

v.

JOHN CAPRA, LEOLUCA GUARINO and STEPHEN DELLACAVA,

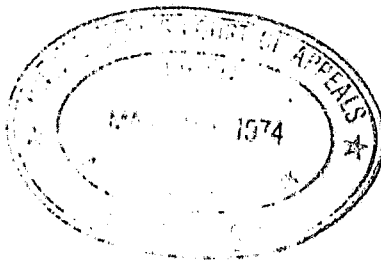
Defendants-Appellants.

On Appeal from Judgment of Conviction from the United States
District Court for the Southern District of New York

Appendix

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BARRY IVAN SLOTNICK
Attorney for Appellant, CAPRA
15 Park Row
New York, N.Y. 10038
(212) 233-5390

GEORGE L. SANTANGELO
Attorney for Defendant, GUARINO
253 Broadway
New York, N.Y. 10007
(212) 267-4488

LAWRENCE STERN
Attorney for Appellant, DELLACAVA
343 West 29th Street
New York, N.Y. 10001
(212) 947-0537

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1 rsl7

2 MICHAEL GIOVANNELLO, called as a
3 witness by the Government, being first duly sworn,
4 testified as follows:

5 MR. FEFFER: For the record --

6 MR. SLOTNICK: Is this the detective who has
7 been sitting in court this whole hearing?

8 MR. FEFFER: That is right.

9 Let me explain, your Honor. He is simply
10 going to testify to a compilation he made from listening
11 to tapes in terms of listening to telephone calls and
12 that type of information. He did not take part in the
13 monitoring of Diane's Bar or the wiretap.

14 That is his only function is to represent to
15 the Court the information which we provided to the Court
16 in 11.

17 MR. SLOTNICK: Let us see what he says.

16 18 DIRECT EXAMINATION

19 BY MR. FEFFER:

20 Q How are you employed?

21 A I am a detective for the New York City Police
22 Department.

23 Q How long have you been so employed?

24 A Approximately 15 years.

25 Q What is your current assignment in the New York

rs18

Giovannello-direct

1211

City Police Department?

A I am assigned to the Special Investigations Unit, Narcotics Division.

Q Are you familiar with a wiretap that was conducted on telephone number 722-9595, Diane's Bar from December 9, 1971 to approximately the 3rd of February 1972?

A Yes, I am.

Q Have you had occasion to review yourself the logs that were made by monitoring officers in connection with that wiretap?

A Yes, sir.

Q During the first part of that month did you personally supervise other police officers and agents of the Drug Enforcement Administration listening to the reels of tape that were taken from Diane's Bar wiretap?

A Yes, I did.

Q Do you recall how many reels of tape there were?

A 16 reels.

Q Did the officers and agents under your direction obtain certain information relevant to each telephone call?

A Yes.

Q That was intercepted?

1
2 A Yes, they did.

3 Q Can you give the Court the total number of
4 telephone calls?

5 A 1561 calls.

6 Q This came from actually listening and counting
7 the calls?

8 A That is correct.

9 Q Out of the 1561 total calls, how many were
10 incomplete in the sense they may have been wrong numbers,
11 busy signals, misdials, no answer or calls to secure
12 information, time and weather?

13 A 402.

14 Q That leaves 1159 conversations?

15 A Correct.

16 Q Out of this 1159 how many of these calls were
17 monitored in part?

18 A 428 calls were cut off.

19 Q Leaving, am I correct, 730 would be the number
20 of calls monitored in full?

21 A That is correct.

22 Q Did you compile certain information relative to
23 the length of each of the 730 full monitored telephone
24 calls?

25 A Yes.

rs20

Giovannello-direct

1
2 Q Did you put this information on a chart your-
3 self?

4 A Yes, sir.

5 MR. FEFFER: Will you mark this for identi-
6 fication.

7 (Government's Exhibit 14 was marked for
8 identification.)

9 Q How many charts were involved?

10 A There were two charts.

11 (Government's Exhibit 15 was marked for
12 identification.)

13 Q I will ask you to look at Government's Exhibit
14 15 first and ask you if this is a chart you compiled?

15 A Yes, sir.

16 Q Can you explain what is represented by this
17 chart?

18 A This was a chart compiled of calls that were
19 made in full of Stephen Dellacava.

20 Q Out of the 730 telephone calls?

21 A That is correct and broken down zero to 30
22 seconds, 30 to 60 seconds, one minute to two, two to three
23 and three minutes or more.

24 Q I show you Government's Exhibit 14.

25 Can you explain to the Court what that chart

rs21

Giovannello-direct

1 A This was a chart made of calls in full of
2
3 everything that was monitored.

4 Q Out of the balance of the 730 calls that
5 Stephen Dellacava did not partake in?

6 A That is correct. It is in a similar fashion,
7 zero to 30, 30 to 60, one minute to two minutes, two minutes
8 to three minutes and three minutes or more.

9 MR. PEPPER: The Government offers 14 and 15
10 in evidence.

11 MR. SLOTNICK: Objection to the introduction,
12 your Honor. It is a question of relevancy, a lot of
13 numbers, times and no meaning. I can't verify it.

14 There is no proper foundation at this point
15 laid for its admissibility and to be very honest, I am
16 looking at a puzzle with numbers and additions and, again,
17 I just object to its admissibility.

18 THE COURT: Are there any other objections?

19 MR. FEITELL: I object, your Honor.

20 THE COURT: On what ground?

21 MR. FEITELL: I don't think a sufficient
22 record has been established yet to have this admissible
23 because we don't know what calls these relate to. The
24 calls on the tapes are not referred to.

25 May I have a voir dire for a few minutes?

Maybe we can clear up some of this.

THE COURT: Yes.

VOIR DIRE EXAMINATION

BY MR. FITZELL:

Q . 15 for identification relates just to calls of Beans, is that right?

A May I see that?

Yes, that relates to Stephen Dellacava.

Q When did you make this breakdown?

A I believe two weeks ago.

Q Who worked with you?

A Eight police officers -- correction, seven police officers, one agent.

Q So that the tapes were distributed to them and you gave instructions and they fed back information to you?

A That is correct.

Q The results on the sheets of paper are based on information given by other officers, is that right?

A I worked on it also myself.

Q I understand that. But when you say you prepared this chart, what you did was you wrote down numbers they gave you, correct?

A That is correct.

rs23

Giovannello-direct

Q You had given them some tapes, right?

A That is correct.

Q The tapes -- you told them what to do?

A That is right.

Q They took the tapes and went -- did you have a program how you did it?

A We sat in a room.

Q All sat in the same room listening to the tapes together?

A That is correct.

Q All officers were listening to the tapes, right?

A Headphones.

Q Everybody plugged with headphone sitting and listening?

A That is correct.

Q You didn't do the whole job yourself?

A No.

Q You had a lot of help. How many officers were involved?

THE COURT: He told you already, seven policemen and one agent.

Q How much time did you spend doing this?

A It took us approximately three or four days.

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Giovannello-direct

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Q What time did you start each day?

A About 10 o'clock.

Q Work straight through?

A Each reel consists of two hours.

Q Timed each call?

A That is right.

Q When you worked you had logs, didn't you?

A On this particular breakdown?

Q Yes.

A Yes, sir.

Q You were listening to calls involving Beans?

A That is right.

Q A lot of these officers had never listened to these tapes before, correct?

A We established the voice identification prior to doing this with the officers.

Q You gave them a little schooling on how to identify Beans' voice?

A No, we played the voice of Stephen Dellacava.

Q Which conversation did you play for them?

A I don't recall.

Q Who picked out this conversation?

A I did.

Q You don't remember the one you picked out?

rs25

Giovannello-direct

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A The one particular call?

3

Q Yes, sir.

4

A No, sir.

5

Q What other calls did you give them to listen

6

to before you let them listen to these Beans conversa-

7

tions?

8

A One call that I gave to the officers.

9

Q You can't tell us now by racking your memory

10

which one it was?

11

A If I go through the reels I can tell you.

12

Q Now, you had the logs, didn't you?

13

A That is correct.

14

Q Didn't you give the logs to the officers so

15

they could work from the logs?

16

A That is right.

17

Q They had the logs next to them right while

18

they plugged in, correct?

19

A Right.

20

Q So these particular officers could go to the

21

log and listen to the conversation?

22

A That is correct.

23

Q They had the text when they were sitting there?

24

A That is correct.

25

Q Where was this done?

rs26

Giovannello-direct

A The Drug Enforcement Administration, 555 West
57th Street.

Q You were up there every day while this was
happening?

A That is correct.

Q You had your assignment book with you?

A We don't maintain assignment books.

Q You have a work schedule which would indicate
anything in writing, indicating that you were up there
this protracted period of time?

A I don't have it on me.

Q Tell me the names of the officers who were
with you?

A Detective Navoa, Sergeant Martir, Agent
Blanchard, Detective Jackson --

Q Are you reading from a sheet of paper to refresh
your recollection?

A Yes, I am.

Q Can you testify without your notes for the time
being? Turn it over, please.

A Okay.

Detective Jackson, Detective Dolan, Detective
Navoa, Sergeant Martir, myself -- I can't recall offhand
who the seventh officer was.

rs27

Giovannello-direct

1
2 Q It is your testimony that they had seven
3 machines up there?

4 A Not seven machines. There were times we had
5 four and times we had three and sometimes we had five.

6 Q Are you talking about machines or men?

7 A Machines.

8 Q What floor did this take place on?

9 A 19th floor.

10 Q Did you break the work up in any particular way?

11 A I broke the logs down as per reel. In other
12 words, each reel had a particular amount of logs. That
13 was given to the officer.

14 Q You gave the reels to a particular officer
15 after you determined that these reels related to certain
16 pages of the logs, is that what you say?

17 A That is correct.

18 Q In other words, the logs dictated how you
19 would break up the reels, correct?

20 A That is correct.

21 Q You directed them to work with the logs, right?

22 A Yes, sir.

23 Q Where are the logs they worked with?

24 A Mr. Feffer has them.

25 MR. FEITELL: Could we have those, please?

rs28

Giovannello-direct

MR. FEFFER: They are the same logs that were duplicated and given to you. They are the work product of this officer with the names written in, the same ones.

MR. FEITELL: That is not what I am looking for.

Do you have the logs that the officers worked on, that they utilized?

MR. FEFFER: A copy was made of these and given to them, the same copy you have.

Q Who collected the logs when the officers were finished using the logs?

A I did.

Q Where are those logs?

A Mr. Feffer has it.

MR. FEITELL: Could I have that, Mr. Feffer?

MR. FEFFER: I will ask the witness if these are the ones I have in my hand.

THE WITNESS: Yes, sir.

Q You parceled out the tapes and gave portions of the log to each of the officers, right?

A Yes.

Q You gave them their copy of the log to work with?

A That is correct.

rs29

Giovannello-direct

Q What happened to the portions of the logs that you gave to the officers to work with?

A Mr. Feffer has it in his hand.

MR. FEFFER: He has a copy of it.

MR. FEITTELL: Let me work with the witness myself, please.

MR. FEFFER: These are the logs that we made and that is precisely why you have a duplication except for our notes.

Q Are you telling me just the yellow cap was turned over to the officers, this yellow sheet of paper?

A That is correct.

Q Well, taking a look at this folder Mr. Feffer just told over to me, have you see this before?

A Yes, sir.

Q This sheaf of papers?

A That is right.

Q When did you see this in connection with what we are talking about now?

A February.

Q Is it your testimony that Mr. Feffer gave you these duplicate originals and not a Xerox copy to take with you up to 57th Street?

A These are in my office, SIU office.

1 rs30 Giovannello-direct

2 Q They were in your office?

3 A Correct.

4 Q Did you undertake to make any Xerox copies of
5 that before you went up there in connection with the work
6 these officers were going to perform?

7 A I made Xerox copies for Mr. Slotnick a long
8 time ago.

9 Q We know that.

10 Did you hear my question?

11 MR. SLOTNICK: I didn't get the answer and I
12 heard my name mentioned.

13 (Record read.)

14 A No, I did not.

15 Q So you just gave them the SIU copy that you
16 had, you broke it up and parceled it around?

17 A That is correct.

18 Q They were working with pads and pens and pencils,
19 correct?

20 A That is correct.

21 Q They were writing down, part of your instruc-
22 tions were to write down the log and make -- when they came
23 to a conversation involving Steve or Beansy, how long
24 the duration of that conversation was?

25 A That is correct.

rs31 Giovannello-direct

Q Did you give them any instruction in so doing to designate or identify the particular conversation in terms of seconds of duration, yes or no?

A Yes, I did.

Q So that they were supposed to make a record of the call they listened to and its duration, of that call?

A That is correct.

Q Where are the records that the officers made showing the duration of the call if any?

A They made that on scratch paper.

Q Where is that scratch paper?

A I don't have it.

Q Did you sit down and tabulate it?

A Yes, I did.

Q They submitted all the scratch papers to you?

A Each particular reel.

Q They told you which calls were 30 seconds, 60 seconds, 90 seconds, right?

A They gave that to me per reel.

Q They told that to you in connection with each conversation, wrote it down, isn't that what you just testified to?

A Correct.

rs32

Giovannello-direct

Q If it was a conversation of 60 or 90 seconds they indicated on a piece of paper which conversation was 60 to 90 seconds, right?

A Not each particular conversation, as per reel, a reel breakdown, given as a reel.

Q Do you mean they gave a total number of calls on a reel that went 60 to 90 seconds, for example?

A That is correct.

Q Didn't you tell them to single out and identify the conversation that they said was 60 to 90 seconds so we could go back on the record and examine it if we quarreled with it?

A They did.

Q Do you understand my question?

A No.

Q Let me rephrase it.

Did you tell them in words or in substance to determine how long each conversation involving Beans was?

A That is correct.

Q Did you also tell them when establishing the length of a conversation to indicate somewhere in writing which conversation was so many seconds?

A No, I did not.

Q So there is no way in the world now that we

rs33 Giovannello-direct

can find out which of the 30, 60 or 90-second conversations, except to go through all these tapes?

A That is correct.

Q You knew that that was going to happen here, didn't you?

MR. FEFFER: Objection, your Honor. We are way beyond the scope of a voir dire.

THE COURT: Well, it is an attempt to establish whether this evidence is so unreasonably vast that I shouldn't receive it. I will allow it.

Q Now, we are now back to the information from the officers and, for example, with respect to reel 1 there are three conversations going from one to two minutes.

Do you have the information in front of you at one time as to which conversations those were?

A No.

Q The officers never indicated to you in writing which were one to two minutes long?

A No, they did not.

Q Did you ever get on the tapes the check if the count given to you by the officer was correct?

A I believed what they said.

Q Your answer is no, you never did?

rs34

Giovannello-direct

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A That is right.

3

Q Not in a single instance?

4

A That is correct.

5

Q All you did was to collect scraps of paper,

6

draw the lines on this piece of paper and add up the

7

numbers and fill them in?

8

A That is right.

9

Q You did some work on these tapes yourself?

10

A That is correct.

11

Q Which one did you work on?

12

A I believe reel 7.

13

Q You are not sure?

14

A I am not sure.

15

Q Do you have any no-es with you as to what you

16

did that day?

17

A No, I don't.

18

Q Aren't you refreshing your recollection from

19

something?

20

A The same thing you have.

21

Q Did you get any instructions from Mr. Feffer

22

to collect the work product up at the DEA headquarters?

23

A Yes.

24

Q You understand the paper product generated by

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the police officers, he told you to keep that, didn't you?

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A Told me to keep it?

Q Collect it from the officers.

A To make a master sheet.

Q Had you wanted to could you have kept these papers and put them in an envelope to hold them for this trial?

A Yes, I could have.

Q You were aware of the fact that two or three weeks ago this judge was concerned about the duration of the calls and the number of calls involved, isn't that so?

A Yes.

Q Mr. Feffer gave you instructions which embraced some of the questions that we had in this case, right?

A Correct.

Q You have seen the correspondence in the case, right?

A Correct.

Q Between the attorneys.

What did Mr. Feffer tell you, if anything, with respect to saving the underlying work product of the officers who allegedly worked on this?

A I was told^{to} make a master sheet, that is what my instructions were.

Q He didn't tell you to save the underlying work

product?

A No.

Q Tell you to get rid of it?

A He didn't say get rid of it either.

Q What did you do?

A I got rid of it.

Q What did you do with the underlying work
product?

A Apparently threw it away.

Q You don't know?

A I did throw it away.

Q Now your recollection is you threw it away?

A My instruction was to make a master sheet.

Q Who told you to throw it away?

A No one did.

Q Did you discuss throwing it away with anybody?

A No, sir.

Q Where did you throw it?

A At the Drug Enforcement Administration.

Q You got rid of it right up there?

A My instruction was to make a master sheet.

Q I understand that. That is why you threw it
away up at the Drug Enforcement Administration?

A That is correct.

rs37 Giovannello-direct

Q The form which is multigraphed, who prepared that?

A I did.

Q Where did you do that?

A Drug Enforcement Administration.

Q Did they run it off for you?

A I Xeroxed that.

Q Tell me, how many papers were involved that were given to you by these other officers?

A No much.

Q Not that much, right?

MR. FEFFER: Objection, I think it is fairly well established that the underlying papers are no longer in his possession. Anything else is repetitive to say the least. It has been answered.

THE COURT: Mr. Feitell, I do get the general drift of the point. I keep hoping that after we get to know each other you will acquire some small fraction of respect for me that I have for you and labor things a little less.

MR. FEITTEL: All right.

Q With respect to the calls of others, which is 14 for identification, I take it you utilized the same procedures?

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A That is correct.

Q Who told you to break it down zero to 30, 30 to 60?

A Mr. Feffer.

Q Anybody tell you to break down like zero to 90?

A This is my instructions.

Q Or zero to 10 seconds?

A These are the instructions that I was given.

Q You testified --

MR. FEITELL: I will save that for the regular cross, Judge, I am sorry. I am trying to stay within the voir dire.

Q What types of machines did they have up there that you utilized?

A Tanbergs.

Q Who recruited the officers to do the listening?

A I did.

Q I take it each of the men were equipped with earphones?

A That os right.

Q The tapes that were utilized, where dfid you get those tapes from, which tapes were those?

A Copies.

Q These particular officers, did they have a

rs39

Giovannello-direct

common assignment?

A Do you mean did they work together?

Q Under one command.

A No, sir.

Q You drew them from a variety of commands?

A What?

Q Did you draw them from a variety of commands?

A A couple of police officers were involved originally in the Diane wire.

Q Who were they?

A Detective Cortazzo, Detective Navoa and Detective Eaton I think was involved too.

Q He was up there too listening to these tapes?

A That is right.

Q Doing this statistical work?

A That is correct.

Q How did you reach out for the other officers? Where did you get them from?

THE COURT: What is the significance of that?

MR. FEITELL: I want to get --

Q Could you tell us what commands the people were in?

THE COURT: What is the significance of that?

MR. FEFFER: He can have the names.

rs40

Giovannello-direct

MR. FEEFER: He can have the names.

MR. FEITELL: That is all I have.

That is it, that is where I was going. I want to know what their commands are.

MR. FEEFER: I can produce them.

MR. FEITELL: With their memo books.

Will you please ask them?

THE COURT: Before you go on with this conversation, I don't like to intrude but don't do it any more. If you have an application, make it. If you want to talk with Mr. Feffer do it in a recess but don't do it both together.

If you are applying for the production of all these officers let me think about that a little bit. I would just as soon not to have to hear them because I want to know what is at stake here.

Are you through with your voir dire?

MR. FEITELL: Yes and I persist in the objection.

THE COURT: Do you have anything further?

MR. McALEVY: No, I join in the objection.

THE COURT: Now, the problem is not uninteresting.

I have been given instruction by both sides on these statistical questions which may or may not be material

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but which in part result from my inquiries to you.

Now, for the defendants, the responses come in the form of memoranda saying what the lawyers heard.

I don't know whether any of the lawyers plan to take the witness stand on this. These questions about matters of fact, first, do you, Mr. Slotnick?

MR. SLOTNICK: I do not.

MR. FEITELL: Intend to call lawyers?

THE COURT: I meant something more pointed. You put in a memorandum in response to my question and you said all the calls were completed and it is signed by lawyers and it says the lawyers listened but these are statements about matters of fact and so I am asking you and I am not challenging you but to know what I am dealing with now, do you mean to take the witness stand or just want me to take as true because you put it in a memorandum?

MR. FEITELL: I don't mean to take the witness stand.

MR. McALEVY: I don't intend to take the stand.

THE COURT: The fact remains that you have told me certain things in the memoranda with assertions about matters of fact and all those assertions rest on the papers.

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Giovannello-

Now, if you are not going to take the witness stand my next question is who will support your account of these calls and how many are complete and perhaps the answer to that question is nobody will but I want to know how do you envision the handling of that problem?

MR. SLOTNICK: In view of the fact that we don't have nine agents and we are still working on it now and hopefully by tomorrow at 4 o'clock we will be completed with whatever compilations are necessary so that he will be able to take the stand and testify. That is our problem. That is the way we plan to do it.

THE COURT: Will he develop the same categories of numbers as this officer is proposing to give now in these exhibits?

MR. SLOTNICK: Not on the time schedule. We have just -- don't have the ability to clock in 30 seconds, 60 seconds, 90-second calls.

THE COURT: Why not, don't you have a stop watch?

MR. SLOTNICK: The question is we lack the manpower and are attempting now to produce to your Honor the tape recordings that we say we will give your Honor so that he can listen to it as an exhibit. We have at this point one reel completed. We are going on further.

Again, it is a basic problem of a lack of manpower.

We will not be able to produce for your Honor the 30 seconds, 90-second compilation and as your Honor knows it is my theory this is irrelevant.

THE COURT: But you are aware it is the theory of some of the cases that it may be relevant and I would hope you would get down to my level and contemplate the possibility that you may be wrong sometimes.

MR. SLOTNICK: It is not a question of I might be wrong. We have answered your Honor's memorandum as best we could. Again, for the purposes of making a record, I am indicating that the memorandum of your Honor's requests came at a time after we had heard the tape recordings and scurried about and attempted to put together something for your Honor timely that would make sense to your Honor although I think we have indicated in our papers we disagree with your Honor's request and feel that is not the way it should be handled.

However, we did accede to your Honor's inquiry because it is rather necessary. What we did we are putting on tapes and you will be able to time the conversations. We just have not the manpower to do it and do everything else involved. If your Honor says he feels in the interest of justice it would aid him we will just have to

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get somebody else to start doing this. We will find ourselves as I started to say working around the clock again as your Honor ordered me.

THE COURT: I am not telling you what kind of work to do, I am just asking some questions and see how I can rule on what are substantial objections to the offer of evidence. I hope you understand what we are talking about, otherwise I won't waste time on it.

I have asked you to get me about a day's listening and there is one very vivid issue in the papers that I find interesting to explore and it has been very easy.

The Government says a very substantial number of calls were cut off. The defense lawyers say there were some 1300-odd calls and none were cut off. That is a very sharp issue. You are shaking your head no, Mr. Feitell.

MR. FEITELL: That is what we said in the papers.

MR. SLOTNICK: That is what our papers tend to indicate.

THE COURT: Is that what they said? I asked for -- or did I misread them? I must tell you I just reread them because it was an important point to me, it

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as something sort of to latch onto and test the accuracy of both sides.

Is that what the papers said in so many words? You all signed it, Feitell, McAlevy and Slotnick.

MR. SLOTNICK: That is right.

THE COURT: You are telling me this is wrong?

MR. SLOTNICK: The reason that we signed it and felt that way must become apparent to the Court.

THE COURT: It is not apparent to me at all.

MR. SLOTNICK: I will give it as clearly as I can.

We received a set of logs which do not indicate that this machine was ever turned off. We then received a set of tapes which were listened to during the course of the summer.

We were unable, at least I was to be totally candid, I was unable to tell from the tapes whether there was something wrong with the tapes or what the problem was because subsequently, which is now clarified in my mind, Detective Eaton says it would be possible to have the same conversation twice. We had copies of copies. Without going into that, I don't think it is important, from the logs I was unable to tell whether the officers had actually recorded everything or not and whether there

1 was a tape now encompassing what they consider a minimiza-
2 tion project.
3

4 I had seen other logs with one of the same
5 officers involved where every time the machine was shut
6 off it said, "MO" on the logs. That does not exist
7 here. Therefore I assume everything was listened to.

8 I asked Detective Eaton did you have a little
9 button where you could listen to what was going on and
10 not tape it, did that exist.

11 THE COURT: That has been clarified.

12 The reason I do that was on a question like this where
13 it seems to me the judge needs to make a practical judg-
14 ment, the first thing I want to know is what are we
15 fighting about. If this police officer is going to
16 testify that 629 were cut off and 730 were monitored in
17 full and the defendants say none were cut off, they were
18 all monitored in full, that is a good fight and then
19 you can all get me some samples and I can make a judg-
20 ment.

21 On the other hand, if the Government is going
22 to say 439 were cut off and the defendants are going to
23 say it is really 417, then I can say I really don't care
24 about that. It gets to be de minimis and that is why I
25 asked you where you stood on this.

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Now, you tell me the issue posed by your papers was not the issue that I now have, for whatever good faith reason the picture has changed.

Now, I think the Government has made a modest effort within the limits of energy and personnel to accumulate certain statistics that may or may not be material. Of course, if they are I am sure, Mr. Slotnick, you couldn't be hurt by them. But if they are material I would like to get some sense of what they are.

Now, I think the ball ought to be in the other court. As to personnel, I think the defendants can hire some listeners although I don't like to put them to unnecessary expense.

20 THE COURT: I am going to say after they have, if the defendants think this ought to be done -- if they don't think it is material they don't have to bother -- but if they think these numbers about how many were cut off and how many were monitored in full and how many were of whatever length, that should be debated and then I will ask the defendants, invite the defendants to get their numbers and if their numbers are significantly different from the Government's, I am going to make the Government do its job again and that in the exercise of so-called supervisory power, I think I would be entitled to do

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2 though I realize, it is a horrible prospect and then I
3 would ask to have it done and there should be some break-
4 down by real number so that opposing counsel and the
5 judge or somebody can test the underlying work and there
6 should be a greater possibility in short of exploring
7 on pointed cross-examination the basis for these bottom
8 line numbers than we are evidently going to have here.

9 But before I cause that to be done I want to
10 see what we are getting into and fighting about and I want
11 the defendant through responsible spokesmen on the witness
12 stand like this detective to say no, these numbers are
13 wrong, they are such and such and then, since the defendants
14 will have the benefit of this initial start by the Govern-
15 ment, they will be prepared to give the foundation that
16 they have observed is desirable as part of that present-
17 ation.

18 With that understanding, realizing this is
19 not quite open and shut, I am going to receive the testi-
20 mony and see where we go in due course, after we get
21 whatever defendants are going to give us, whenever we get
22 it and if necessary we will redo it.

23 Before I close this little subject, I want any-
24 body to make any objections, corrections, suggestions that
25 seem useful or necessary.

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MR. FEPPER: Just to make sure I understand your Honor you're asking whether there is a reel breakdown, in other words, 1 through 16, each reel is separate.

THE COURT: I didn't know that. The officer's testimony didn't make this clear to me. That helps.

MR. FEPPER: For example on --

THE COURT: I understand what you are saying. Some days I am quick. That will give the defendants some opportunity to spot-check this. I misunderstood the officer's testimony to suggest the contrary. I am sure I did misunderstand.

Anything else?

MR. FEITELL: May I pursue a few more voir dire questions in light of what your Honor just stated?

THE COURT: Surely.

BY MR. FEITELL:

Q You said you cut off 429 calls?

A That is correct.

Q Was a sheet prepared or a chart prepared indicating the calls cut off?

A A chart?

Q Yes, like these two charts, 14 and 15, did you make another chart for cut off calls?

A No. Similar to this?

1
2 Q A chart, whether similar or not, or a break-
3 down?

4 A Yes.

5 Q Who has that?

6 A Mr. Feffer.

7 MR. FEITELL: May I see that, please?

8 Q Now, with respect to cut off calls, did you
9 tell the officers to time how long the calls went before
10 they were cut off?

11 A No.

12 Q In certain instances with respect to cut off
13 calls, isn't it a fact that the parties were just about
14 to say good-bye to each other and it was cut off?

15 MR. FEFFER: Objection. I was under the
16 impression on this before the Court. Now we are going
17 into another figure.

18 THE COURT: I don't think that goes to admiss-
19 ibility, Mr. Feitell.

20 MR. FEITELL: Your Honor, in discussing the
21 439 cut off calls takes this apparently as fact. I want
22 to get into --

23 THE COURT: I didn't take it as anything.

24 MR. FEITELL: Then I will save it for later.

25 That is all. I object.

1
2 MR. FEFFER: The Government would renew its
3 offer.

4 THE COURT: I explained in advance the grounds
5 on which the objections will be overruled and we will receive
6 it.

7 (Government's Exhibits 14 and 15 for identi-
8 fication received in evidence.)

9 MR. SLOTNICK: In view of your Honor's ruling
10 may we be provided with copies of Government's exhibits
11 so that we can have a copy of it?

12 THE COURT: I would think so.

13 Get me a copy too.

14 MR. SLOTNICK: Thank you, your Honor.

15 MR. FEFFER: No further questions, your Honor,
16 other than these two other matters.

17 THE COURT: Will I wait for the officer to
18 testify to it or does the exhibit show the total number of
19 intercepts of each of the three movants we have?

20 MR. FEFFER: No, just Dellacava.

21 THE COURT: Let me see if I can identify as
22 many as we can.

23 How many calls in toto does it show were inter-
24 cepted for Dellacava?

25 MR. FEFFER: It would be 235.

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1
2 THE COURT: Mr. Feitell, what is your position,
3 is that a correct number?

4 MR. FEEFFER: When I say 235, it was completed
5 conversations. There may have been some conversations
6 of Dellacava that were cut off, I don't know that. But
7 235 completed conversations.

8 THE COURT: You listened with some interest
9 to Mr. Dellacava's conversations, right, Mr. Feitell?

10 MR. FEITELL: I didn't hear most of those
11 tapes, Judge. I listened to as many as I could.

12 THE COURT: Didn't somebody listen? Whoever
13 listened from your stable or team, what do you assert now,
14 is the correct number as against 235 represented by the
15 Government in this evidence?

16 MR. FEITELL: I assert the figures that are set
17 forth in our memorandum.

18 THE COURT: What is that?

19 MR. SLOTNICK: The figure in our memorandum
20 I believe is 400 something. That was taken and that
21 encompasses all of the calls of Dellacava without getting
22 involved with the issue of whether they were cut off or not
23 cut off. Your Honor understands why we did that.
24 I think that is the proper way to approach Dellacava as
25 to the total number intercepted, whether in total or in

part.

A partial conversation could have taken three minutes and the officer decided to shut it off at that point. So I contend our figures as to the total number of conversations with Dellacava is totally correct. As a matter of fact, I think they coincided with Mr. Feld's first piece of work on the minimization proposition which he indicated Mr. Dellacava was overheard on Diane's Bar a total of 238 times.

MR. FEFFER: That is what we say, 238.

MR. SLOTNICK: I think we are pretty close.

THE COURT: I am interested in knowing because as I told you before if there is no real issue about these numbers, then we don't have to get excited or worried about ruling on the evidence.

MR. FEFFER: I was under the impression that the first numbers were 400 something.

THE COURT: Yes, that is what Mr. Feitell said but when somebody says we are pretty close I am so happy I don't want to stop him.

Which is it now, 200 something or 400 something?

MR. SLOTNICK: Stephen Dellacava was overheard 60 times during the course of Diane No. 1 and 60 and 143 comes pretty close.

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THE COURT: No real issue about that.

MR. SLOTNICK: About his overheard, no.

THE COURT: That is why I want to know about these things because while according to Wigmore there are a lot of things you can do on voir dire, I don't propose to do them if they are just an amusement of us little people and don't relate to any issues that we really care about. I want those issues identified responsibly and when you disagree with the Government's evidence on those numbers and things, you will show me that and then we will buckle down and find out what the fact is so you will be ready to find some reel is substantially incorrect in your view, then I will listen to whole reels and that might be enough to knock the whole thing out of the box.

On the other hand, if you don't find anything incorrect --

MR. FEITELL: The narrow issue before me was whether or not I agreed to the admission into evidence of the charts. I didn't. That is all.

THE COURT: That is not all, Mr. Feitell. The next thing is I tell you where the thing stands for your guidance and how I apprise the law in this court, meaning really to help you. If you rather I didn't do this any more --

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MR. FEITELL: No, I feel I need all the help I can get.

THE COURT: The rest of explanation is what you conceive to be your responsibility to your client and the Court. So you use that in whatever way you see fit.

MR. SLOTNICK: Your Honor, furthermore, perhaps to aid the Court with regard to our memorandum, we have indicated that in Paragraph 3 the both sets of memoranda, the logs given to the defendants tends probably to indicate all were monitored in full and underline that.

I don't think we made this statement they were recorded in full because we are a little concerned about that answer now and your Honor has given us guidance and we are attempting to work along that basis.

THE COURT: I don't know what you just said. I have been sitting here a long time and one thing that seems so far undisputed and maybe it will be disputed too is that in this case monitored and recorded are coterminous. The testimony is clear. Whether you underscored monitoring in full or not all those words mean the same thing to me. Whatever was monitored was recorded and both intercepted.

I thought we established that the first ten minutes of the hearing.

MR. SLOTNICK: I thought your Honor questioned that.

THE COURT: Do you question it?

MR. SLOTNICK: Not at all.

THE COURT: Then what you undersore is not the least bit helpful. It doesn't effect it materially. Let us proceed with the witness.

CROSS EXAMINATION

BY MR. FEITELL:

Q With respect to the alleged calls cut off, did you tell the officers to clock the duration of those?

A No, sir.

Q Did you tell the officers to break down the identity of the cut off parties involved?

A No, sir.

Q How did you define to the officers what a cut off was?

A Well, when the monitoring officers shut the machine off the conversation would stop.

Q And how could the officer determine when listening to the tapes the machine was cut off?

A There is a distinct tone in the machine.

Q Can you describe the tone?

A Well, it is just shut off.

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Q Isn't it a fact that the tone on an intentional cut off is the same tone that is delivered up when there is a malfunction in the machine and it stops recording?

A That is correct, possibly.

Q And there were a number of instances of malfunctioning here, right?

A That is correct.

Q So if the Court listens to the tape alone and hears this tone or whatever he is going to hear he might not know whether the machine malfunctioned unless he has extrinsic evidence to establish that?

A It is a possibility.

Q Many of these conversations, isn't it a fact, that the person listening in, the agent or whoever listened had an opportunity to easily anticipate in the flow of the conversation running between the parties that they were going to hang up, one side or the other would be hanging up in a matter of seconds if not immediately?

MR. FEFFER: Objection.

THE COURT: I will allow it. I don't know how he would know, frankly, but if he knows as a police officer.

A I wasn't the original monitoring officer.

Q Well, when you listened to these tapes to

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determine duration up at the DEA, didn't you hear people involved in a conversation that had gone 60 seconds, perhaps verging on to two minutes, where it became apparent in the way this conversation was leveling off down there that there was going to be a hang up any second?

A It is a possibility.

Q Right. In certain of those instances isn't it true the officer cut the machine?

A I wouldn't know what a monitoring officer would think of. I wasn't there.

Q It is a fact, isn't it, that there are conversations on these tapes which contains substantially all of the information that the parties meant to communicate to each other before they went to the ultimate formality of hanging up with each other; isn't that so?

A It is a possibility.

Q Then in some instances the machine was cut off before the party hung up, right?

A Correct.

Q Did you make an effort to break down in any way along the lines I have just suggested how close the parties were to hanging up having delivered themselves of what they meant to say?

A No, sir.

1
2 Q Or the duration of those calls which you took
3 credit for cut off, right?

4 A As soon as it was cut off.

5 Q Any kind of cut off for any reason became a
6 cut off in your statistics of 429?

7 A When these conversations cut off.

8 Q The 230 some-odd conversations that -- may
9 I see the chart, please?

10 How many calls in full, 234 Beans?

11 A That is correct.

12 Q Listened to beginning to end, right?

13 A That is correct.

14 Q Some of those calls, one of those calls involved
15 the conversation between Beans and his son about going to
16 get a white shirt for him, for his son?

17 A I don't know.

18 Q In some of these calls also Beans talked to his
19 wife?

20 THE COURT: He hasn't testified about the
21 substance of the calls.

22 Do you want me to listen to any of them?

23 MR. FEITELL: I will devise a question which
24 fairly incorporates what you are driving or thinking is
25 important.

1 THE COURT: I am not driving and I am not
2 interested in what you were asking about.
3

4 Now, move on.

5 Q Did you make a chart, a classification of the
6 230 fully monitored calls of Beans in terms of whom he
7 was speaking to?

8 A No, sir.

9 Q Did you make a breakdown on the chart of the
10 subject matter of those 230 calls?

11 A No, sir.

22 12 Q Did you develop a chart to indicate how many
13 of Beansy's calls were cut off, if any; yes or no?

14 A No, sir.

15 Q So you can't tell me how many of Beans' calls
16 were cut off from the statistics that you developed or
17 from anywhere, right?

18 A No, sir.

19 Q Well, the original brief, the number that you
20 got subtracted from here and you have your calls. The
21 230 calls that you listened to involving Beans involved
22 calls to his girl friend or from his girl friend?

23 MR. FEEFER: Objection, your Honor.

24 THE COURT: Yes, sustained.

25 Q Now, with respect to the calls of others, you

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1
2 don't have a 90-second category, 90 seconds or more?

3 A May I look at this particular sheet that you
4 have?

5 Q The breakdown is the same, the same increments
6 of time?

7 A 90-second breakdown? No, sir.

8 Q But you do have a breakdown which goes to two
9 or three minutes?

10 A That is right.

11 Q On this you have 56 telephone calls of two to
12 three minutes involving others?

13 A That is correct.

14 Q Did you break down those calls to identify for
15 us who was on those phone calls?

16 A No, sir.

17 Q Did any of those phone calls of others concern
18 Stephen Dellacava, those 56?

19 A Not to my knowledge.

20 Q This relates to both tapes, both Diane 1 and
21 Diane 2?

22 A That is correct.

23 Q Let us take Diane 1. Before you had Stephen
24 Dellacava at the top of the order, with respect to Stephen
25 Dellacava during the course of Diane 1 intercept did you

1
2 ever have a breakdown indicating how many intercepts
3 related to other people, two or three minutes?

4 A We incorporated 1 and 2 --

5 Q Yes or no?

6 A No, sir.

7 Q Now, with respect to Stephen Dellacava and
8 the first Diane Bar calls, you gave us a figure of 230,
9 right?

10 How many of the 230 on your chart?

11 A You say the first Diane's?

12 Q On Exhibit 15.

13 A Right.

14 Q You gave us a total of Beans' calls of 230,
15 right. But that figure, that relates to the totality
16 of all the Diane 1 and Diane 2, right?

17 A Correct.

18 Q Did you break it down for us or anywhere to
19 establish how many of those 230 calls are Dellacava calls
20 under Diane 1?

21 A No, sir. We didn't do it.

22 Q Did you break it down to determine how many of
23 those Stephen Dellacava calls were prior to December 19?

24 A No, sir.

25 Q Did you break it down to determine how many of

those calls are Stephen Dellacava calls between September 19 and September 20?

THE COURT: You mean December?

Q December 19. I said September thought I meant December.

A No, sir.

Q December 19 through the 20th?

A No, sir.

Q 21st?

A No, sir.

Q Did you break it down to determine how many of the calls of Stephen Dellacava took place between December 19 and the renewal date of the order, January 6, 1972?

A No, sir.

Q I take it then throughout your chart work there was no concern in terms of the requirements of your chart obligation to set forth the number of calls for any category in terms of narcotic relationships, right?

A None.

MR. FEITELL: That is all I have.

MR. McALEVY: I have nothing.

MR. SLOTNICK: No questions.

MR. PEPPER: Just one or two.

REDIRECT EXAMINATION

BY MR. FEFFER:

Q Officer, when the machine malfunctions at Diane's do you know whether the log reflects that, if you know?

A Yes, they do.

Q Can you define cut off as used in your testimony?

A Well, it is a conversation and all of a sudden the conversation just ceases.

Q You have mentioned I believe eight different officers or seven officers and one agent that worked on the project?

A Yes.

Q I believe two of them were actually monitoring officers on Diane's, that would be Navoa and Martir?

A That is correct.

Q An agent is another one agent as well, that is three?

A That is right.

Q Three of the group were actually monitoring officers that day?

A That is correct.

Q How long have you been working in conjunction with this investigation, approximately?

1
2 A This investigation?

3 MR. SLOTNICK: Objection, irrelevant.

4 THE COURT: What is the relevance?

5 MR. PEPPER: This officer as well as the others
6 have been on this investigation, many of them have listened
7 to these particular wiretaps on previous occasions and
8 also listened to the voices of these defendants in connec-
9 tion with other wiretaps and they are familiar with the
10 people they heard.

11 THE COURT: It is not very relevant but I will
12 allow it.

13 You may answer.

14 A About two years.

15 Q Has Detective Dolan also been involved that
16 length of time?

17 A That is correct.

18 Q And the same for Blanchard and Jackson, approx-
19 imately?

20 A That is right.

21 Q During that course of time have the five of
22 you who did not monitor, had you had occasion as far as
23 you know to listen to either calls or a call at Diane
24 on a subsequent wiretap involving the voices of Guarino,
25 Della Valle and Capra?

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Giovannello-recross

A Yes, sir.

MR. FEFFER: No further questions.

RE CROSS EXAMINATION

BY MR. SLOTNICK:

Q Have you been able to locate the date you got involved in this investigation?

A February, I think February 1971.

Q That is while the Diane Bar second tap was in effect?

A I came after that, right after that.

Q What about the other detectives, were they involved while that was in effect or come after?

A Just the ones -- that is Detective Navoa and Martir and Eaton. They have since been transferred.

Q I am not concerned about that.

Were they around during the Diane 1 and 2 wire-tap, that is Novoa, Eaton and Martir?

A Just those three were.

Q They were?

A Yes.

MR. SLOTNICK: Thank you.

THE COURT: Anything else?

MR. FEFFER: Nothing further.

THE COURT: We will take a ten-minute recess.
(Witness excused.)

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(Recess.)

THE COURT: Ready to proceed?

MR. FEFFER: The Government has no further witnesses with respect to this hearing. It does have only one other matter to take up and that would be with respect to the notice provided to defense counsel and the defendants by this office, the United States Attorney's office of the fact that their clients' voices were intercepted on the Diane wiretap.

That was done formerly in the memorandum of law filed in conjunction with this hearing back I believe in June. So in terms of actual notice whether by statute or not the actual notice was provided in the form of the memorandum of law.

MR. FELD: We might add that we had given them the affidavits and orders of both Diane's Bar and the subsequent wiretaps, of the bugging that went on as early as May and that those affidavits and orders indicated that there had been interceptions during the course of the Diane wiretap.

THE COURT: They knew by June you are asserting?

MR. FELD: By May.

THE COURT: All right. Do you want to dispute this?

1
2 MR. SLOTNICK: I think my papers then indicates
3 it was May or June of 1972 that I received notice.

4 MR. FELD: You mean 1973?

5 MR. SLOTNICK: Yes, 1973.

6 THE COURT: All right.

7 What do we do next?

8 MR. SLOTNICK: Subject to our presentation of
9 the tape recording I think that is the end of the
10 minimization hearing subject to our presentation of our
11 breakdown and our witness, that is it for us.

12 THE COURT: Now, are you all agreed on what I
13 ought to listen to? Where do we stand on that?

14 MR. FEFFER: The Government would make avail-
15 able the four reels, 9, 10, 11 and 12 introduced at the
16 hearing, all compiling I believe from the very first reel
17 of tape the interception of the first 10 or 15 telephone
18 conversations that we feel are representative of the type
19 of interception that went on.

20 Coming at the beginning may be more favorable
21 to defense counsel but we are going to give that to you
22 to get a sampling of the type of calls that came in and
23 the monitoring done and furthermore we attempted to compile
24 some of these conversations between Stephen Dellacava and
25 this woman Jean Pino so that your Honor can hear these as

1 rs69

2 well.

3 THE COURT: When you say you are attempting --

4 MR. FEFFER: Today or tomorrow, and have them
5 in your possession tomorrow.

6 THE COURT: I don't want to possess anything,
7 I just want to complete the hearing.

8 MR. FEFFER: The actual tapings will be given
9 to you.

10 THE COURT: I want to proceed to do whatever
11 listening is needed and get it done while you all sit and
12 listen with me and I am prepared to do that as I had
13 instructed counsel to collaborate in organizing, proposing
14 and counterproposing what I have to listen to.

15 Where do the defense stand on this?

16 MR. SLOTNICK: We have already put together
17 90 minutes of listening for your Honor.

18 THE COURT: 90 minutes? Let us get started.
19 It is a quarter to four.

20 MR. SLOTNICK: It can be here in five minutes,
21 your Honor. It is not here now, it is completed.

22 THE COURT: Look, gentlemen, it is a busy
23 court and I would rather just work around an hour or so
24 a day and the only reason I am pressing you now is that
25 I don't want to wait around for this case or any case, so

plan ahead.

MR. SLOTNICK: I am sorry, your Honor.

THE COURT: Have you sent for this?

MR. SLOTNICK: If your Honor has no objection he will go over to my office and pick it up.

THE COURT: All right, let it be done.

Now, am I to understand that the defendants do not propose to offer any witnesses on this minimization hearing or do I misunderstand -- do you have any witnesses?

MR. SLOTNICK: We don't have a witness yet.

THE COURT: When will you have him?

MR. SLOTNICK: He hasn't finished with the compilation that matches the Government's and if he finds that there are material differences he will take the stand and testify to it.

THE COURT: You know you did have all summer. I assume he is going to finish tomorrow morning and that we will have your witness starting tomorrow. This hearing has been going on a long time already.

MR. SLOTNICK: That is correct. I want to proceed tomorrow. If it turns out that we are not ready by tomorrow morning there will be no delay in time and we will be willing and able to go ahead on the probable cause hearing or the suppression hearing, the Toledo sup-

pression hearing.

THE COURT: By the way, let me ask about that, that is an interesting question.

I had assumed that standing was the whole show. I don't know what the Government submitted on that. I suppose the Government claims that if there is standing it is nevertheless a lawful search?

MR. PEPPER: Very much so.

THE COURT: What else do you have, Mr. Slotnick? I didn't know we were hearing this in installments.

MR. SLOTNICK: We submit if your Honor finds there was standing there wasn't a legal search and the Government has to go forward and we submit it was not a lawful search.

THE COURT: It is clear it was a warrantless search.

MR. FELD: Yes.

THE COURT: The Government doesn't have any evidence to offer beyond the fact of the search to support its reasonableness I assume.

MR. PEPPER: We have no evidence actually but may I be heard as to the search itself in Toledo?

THE COURT: I don't know. What evidence do you plan to put on, Mr. Slotnick?

1 MR. SLOTNICK: We had planned to put on no
2
3 evidence.

4 THE COURT: Let me hear the Government.

5 MR. SLOTNICK: If your Honor finds there is
6 standing there is suppression.

7 THE COURT: I didn't say that. I have to hear
8 all the evidence.

9 Now, with respect to a search I take the suit-
10 case was left in a baggage room for some period of time
11 and opened and whether it can be shown to be reasonable
12 under the Constitution is a question to which I haven't
13 even addressed myself, but I assume everybody put on what-
14 ever evidence they had and if that search because there was
15 no warrant is unlawful, the Government loses and if the
16 defendants have standing to raise that.

17 MR. SLOTNICK: That is correct.

18 MR. FELD: That wasn't our understanding, your
19 Honor. Our understanding was that the purpose of the
20 hearing which we conducted last week was to determine
21 whether anybody had standing to assert a Fourth Amendment
22 claim as far as that search was concerned. Obviously
23 if your Honor said nobody had such standing we would never
24 reach the question of the reasonableness of the search.

25 If your Honor did conclude somebody did have

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2 standing in the case, then the burden would fall upon the
3 Government to show that search, under the circumstances,
4 was reasonable or that, for example, the Fourth Amendment
5 didn't apply.

6 THE COURT: How many witnesses do you suppose
7 I have to hear on that?

8 MR. FELD: I would think about four, three
9 or four.

10 THE COURT: How long would they take?

11 MR. FELD: The Government's direct examination
12 could be concluded certainly within the morning. But we
13 do have --

14 THE COURT: I understand, and I think I am
15 the culprit once again. I want this whole thing sub-
16 mitted to me. I have to interrupt this case for another
17 trial and I want the whole thing before me and you better
18 get these officers in here tomorrow to do this.

19 MR. FELD: I don't think we can do it tomorrow,
20 your Honor.

21 THE COURT: What is the problem?

22 MR. FELD: It involves not simply officers but
23 civilians so to speak, personnel at the baggage terminal
24 that come from Toledo.

25 THE COURT: Listen, I have a feeling, I think

1
2 it is artificial for me to break off the standing thing
3 from the search thing. Somehow I had in mind I had the
4 whole business before me but I was wrong.

5 Today is Monday and I think you just better
6 get them here because I am not positive that the situation
7 of that suitcase, although it was left and who was to get
8 it and when and arrangements about the baggage room
9 may be moot concerning the question of standing. There
10 are certain kinds of things that I leave in certain
11 kinds of places in certain ways that suggest I do claim
12 a proprietary interest and certain other ways I don't.
13 I am not prepared to cut it off in this sharp way.

14 I think Mr. Slotnick has been helpful and you
15 better get your people in and have the evidence as to
16 that search presented.

17 MR. FELD: May we have until Wednesday?

18 THE COURT: Yes. Everybody clear on that?
19 We will run in the search, the Toledo search evidence on
20 Wednesday and then I will take the whole business under
21 advisement.

22 Are we now ready with what somebody wanted me
23 to hear in the way of tapes?

24 MR. SEDONICK: Mine are on the way over, your
25 Honor. My office is about four blocks from here.

1
2 THE COURT: Are there other things we are
3 supposed to take care of in the meantime?

4 MR. SLOTNICK: In the form of hearings, your
5 Honor?

6 THE COURT: In the form of anything. I would
7 like to get everything sort of marshaled here.

8 MR. SLOTNICK: We have before your Honor
9 motions on notice and proposed items, I guess they are not
10 right for discussion until the minimization proposition
11 is finished, but they could possibly be argued or sub-
12 mitted to your Honor.

13 THE COURT: You brief all those things.
14 Is there anything else on which I have to take
15 evidence or have housekeeping discussions with counsel?

16 Hearing nothing I guess there isn't any.

17 I think I ordered all nicknames out of the
18 indictment. The Government ought to plan in the next
19 week or two to retype the indictment without nicknames,
20 sufficient copy so that everybody has them and so if we
21 ever get to try the case before a jury, there will be an
22 edited copy available to the jury without nicknames.

23 MR. SLOTNICK: May I suggest one of several
24 things I am always concerned about, prejudice to the
25 defendants or the defense lawyers that if any of the

witnesses desire to refer to my client under that pseudonym or of Hooks, that if there is a question of identification I would probably consent to the identification and prefer that he not be called that name in front of the jury. I think it would serve no purpose in the context of the case.

MR. FEFFER: I don't agree with that at all. For example, in the case of John Ramos, whenever he refers to John Capra the normal way of speaking, he refers to him as Hooks and it would make a witness get on the stand probably for several days and if he is going to refer to a man's name he has to do it in some normal way and it tends to make it much more difficult for the witness to testify. He knows the man as Hooks, calls him Hooks.

As a matter of fact in conversations referred to in this hearing it shows that this is his common name. The name Spike will not be a problem but in the case of Capra I think it would be asking a little too much on this particular witness to suddenly forget the man's name is Hooks and call him by some other name.

THE COURT: It makes sense to me, Mr. Slotnick. That is the argument on which the Government puts the alias in the indictment. I can take it out of the indictment but a witness that claims to know this man intimately,

if the man is known to him intimately as Hooks or whatever, he ought to be allowed to speak naturally as he is known and I don't think the Government ought to be put at risk after two weeks and suggest that he doesn't know Capra well because everybody knows his name is Hooks and --

MR. SLOTNICK: I am not suggesting that but what I am suggesting is the following, that I think a voir dire would show that Mr. Ramos also knew my client as Johnny and that he referred to him naturally as Johnny and John as he did Hooks.

If that is the only way that he knew my client naturally there is nothing one could do but I suggest he knew him under other names and it might be emphasized by the attorney for the Government that perhaps he could make a concerted effort to use John or Johnny instead of Hooks, just try a little.

THE COURT: Are you representing that Mr. Capra is not known widely or is not identified as Hooks?

MR. SLOTNICK: I have heard, based upon the Government's information that he is known as Johnny Hooks.

THE COURT: Have you spoken to your client? You have heard from the Government. In other words, do you represent to me that he is not commonly addressed or known amongst his friends as Hooks? We will think

1 about it. But I have heard several references to the
2 name that way already and I think there is a limit to the
3 amount of artificiality we should have even in a trial
4 if that is the way he is generally known in the circles
5 where he moves and presumably it is not disgraceful and I
6 personally don't see anything that is about the nickname
7 Hooks.

8
9 MR. SLOTNICK: There is one reference to
10 Johnny Hooks and there are other references on the tape
11 where he is called Johnny. I have seen the defendant
12 amongst his friends and his wife and his family and I
13 never heard anybody call him Johnny Hooks.

14 If your Honor is asking whether I leaned over
15 and said has anybody ever called you Johnny Hooks, I have
16 not done that.

17 THE COURT: As the situation stands now I
18 understand your application and its reason and I am denying
19 it. I will think about it some more and if you find some
20 further arguments for it I will listen again.

21 MR. SLOTNICK: I appreciate that.

22 MR. FEITELL: I have a question with respect
23 to these transcripts and thinking way ahead because depend-
24 ing on how he answers this I may have to do one thing or
25 another. Do they plan to use transcripts before the

1 jury that they turned over to us?

2
3 MR. FEEFFER: Yes. We do plan to use tran
4 scripts and as a matter of fact they are being typed now
5 and they are substantially similar to the ones produced
6 but they are different. We listened to the tapes and
7 came up with more accurate translation. We will give
8 counsel copies.

9 THE COURT: That subject that is more sort
10 of annoying than I realize and it comes up and I thought
11 I had disposed of that yesterday or the day before.
12 Obviously I have not.

13 I will now direct the following and if you don't
14 understand it or you object to it let us thresh it out
15 right now.

16 The Government is to serve on the defense
17 counsel transcripts of all telephone conversations that
18 the Government proposes to offer in the trial

19 What is the earliest, can that be done by the
20 end of tomorrow?

21 MR. FEEFFER: I hope by tomorrow some time we can
22 furnish defense counsel and certainly by Wednesday morning.

23 THE COURT: Not later than Wednesday morning.
24 Everybody heard these tapes but they may have to be heard
25 again and we are dealing with relatively few conversations,

1
2 I assume.

3 MR. FEFFER: I think 19, your Honor.

4 THE COURT: They will be I take it reasonably
5 identified or precisely identified or precisely identified
6 as to date and time and located I hope in accordance with
7 my request as nearly as possible within tapes or whatever
8 so that defense lawyers can get at them.

9 MR. FEFFER: What we have done, we have put
10 them on separate reels and are making copies and can give
11 copies to defense counsel.

25 12 THE COURT: That helps with step two.
13 Step two, defendants and/or their counsel, especially their
14 counsel, are going to listen to the conversations in
15 question and are going to present to me their con tentions,
16 if there are any, that the transcripts supplied by the
17 Government are inaccurate.

18 That means that if the transcript of the con-
19 versation, one is not disputed, whatever other issues
20 there may be, I intend to take that transcript that is
21 agreed to be an accurate reflection of what is on the tape.
22 When there are disputes as to the accuracy of the tran-
23 scripts and in my experience there almost always are, I
24 will hear the tapes and undertake to resolve the disputes.

25 In the few past occasions when this has arisen

1
2 in my experience, I have done the following:

3 In clear cases I have decided the question.
4 That is to say, I have said the tapes should go to the
5 jury, the transcript, in such and such a fashion or some
6 other fashion. In some cases we have agreed after
7 listening together that it really said so-and-so. In
8 other cases, I have put both versions to the jury. That
9 is, I have said here, this is the transcript, the Govern-
10 ment argues it says black and the defendants argue it says
11 white. That is a question of fact like any other question
12 of fact you decide and this is all in the setting of
13 instructions to the jury that the transcript is not in
14 any event independent evidence but simply somebody's
15 version of what the tape which we commonly do receive in
16 evidence is alleged to say.

17 So I think it will be fair if given the fact
18 there are only 19, if the defendants get the tapes by
19 Wednesday we will allow, say, a week for the defendants to
20 put in writing their assertions with respect to the
21 accuracy of the transcripts.

22 Now, first, do you understand what I said?

23 MR. FEITELL: Yes.

24 THE COURT: Are there any objections or amend-
25 ments or whatever?

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MR. FEITELL: I don't want to anticipate but perhaps a cautionary instruction to the Government could save a problem that could develop on these new transcripts typed up. For example, I would have objection if the Government is going to continue the procedure at the top of each transcript of identifying the callers when the callers don't identify themselves. I am not going to stipulate on that. I think there should be testimony as to who it is on the call.

THE COURT: That sounds sensible to me.

MR. FEFFER: Before any telephone conversation is even played to the jury obviously you have to have an individual who identifies the voice as a party to this conversation. Only at this point will the transcript go in.

THE COURT: It seems to me the transcript is only somebody's assertion and they are allowed to put in their assertions in that form to the jury and if there is a genuine dispute, I have found that many of these disputes are figments of our imagination and don't happen but if there is a genuine dispute, I will put the dispute to the jury in whatever fair form is desired, including a counter-transcript.

The Government says it is Feitell and Frankel

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and the defense says it is Jones and Smith and that is the way they would represent that conversation.

I think that this is likely not to come up but, if it does, we will handle it in that fashion.

MR. FEITELL: That is all.

THE COURT: I am perfectly willing to take time with this because it is better to do it now than get bogged down when we have a jury, if we are ever going to have one.

Anything else?

Then the schedule is that by noon on the 26th of September the defendant will have these proposed transcripts of the Government with copies to me and a week later, whatever that date is, October 5? The defendants will serve and file their contentions in accordance with what I have been saying respecting these transcripts, that they are alleged to be inaccurate or inaudible or whatever and then after I have seen what these issues are, set them down for determination as promptly as possible.

MR. SLOTNICK: May I make a suggestion to the Court about a scheduling matter?

Your Honor scheduled the Toledo search hearing to be held on Wednesday and I think the fact is that most of the witnesses are from Toledo. As your Honor well

1 rs84

2 knows Wednesday, that is at least before sundown I will
3 ask to leave. Could we ask the Government to bring in
4 as many witnesses as they can from Toledo tomorrow so that
5 if for some reason we are not finished Wednesday we run
6 in toward the holidays and the witnesses will not have to
7 be flown back and forth?

8 MR. FEFFER: Certainly.

9 THE COURT: Would you do that?

10 MR. FEFFER: We are making every effort to
11 get some here tomorrow morning.

12 THE COURT: Since you are trying to be agree-
13 able and elaborate and accommodate each other if the
14 witnesses get here tomorrow we will suspend whatever we
15 are doing and put the witnesses on who are here.

16 All right, anything else?

17 MR. SLOTNICK: I have the first tape which
18 contains 90 minutes of transcript.

19 THE COURT: This is a subject that I like to
20 deal with in small doses. Let us take a half hour now and
21 then suspend and we will continue in the morning.

22 MR. SLOTNICK: I would ask to have this marked
23 as an exhibit.

24 (Defendants' Exhibit P was marked for
25 identification.)

xx

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2 THE COURT: Will you take a minute, Mr. Slotnick,
3 to tell me and the record what it is that I am about to
4 hear?

5 MR. SLOTNICK: The defendants have taken the
6 first four reels of the Diane Bar No. 1 and have placed
7 what the defendants contend are non-minimized conversations
8 on two reels and have made them into Exhibit P which we
9 call our master reel for Diane's Bar, tapes 1 through 4.

10 There are as your Honor will remember 16 tape
11 recordings for Diane's Bar and we are attempting to
12 accomplish by Exhibit P one full day of listening which
13 your Honor indicated he would like to hear.

14 THE COURT: These, so I can deal with one
15 conversation, are they set so I can tell where one con-
16 versation starts and ends?

17 MR. SLOTNICK: I have had logs made which
18 indicates where one starts and ends and have a Sony counter
19 number. This is a Tanberg so obviously the counter
20 number will be wrong but it is fairly obvious what I can do,
21 as each conversation ends just like to mark off and
22 indicate where the next conversation is and the date and
23 the time as indicated in the Government log. Perhaps
24 that might be best.

25 THE COURT: Can I have a copy of the log?

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MR. FLEPPER: I have only one set. Maybe defense counsel can share a copy.

THE COURT: Do defense counsel have an extra copy I could look at?

MR. SLOTNICK: If your Honor doesn't mind a marked-up copy.

THE COURT: No, I don't mind.

(Handed to Court.)

THE COURT: What you are saying, Mr. Slotnick, is you will play one and then cut it off and tell me which is the next one?

MR. SLOTNICK: Right, for the record, this may be important.

THE COURT: You could just tell me the time of the next one if it is indicated in the log and I would know what I am listening to.

MR. SLOTNICK: The first conversation is December 9, 1971 occurring around 1545. If your Honor looks at the page of December 9 of 1971 and looks at 1445 I think you should then see the Sam and Dennis.

THE COURT: Actually I think in most cases I think to save time I only see one call at any given time. It seems physically that is all you can have at say 1545.

MR. SLOTNICK: That is correct. Except

when we change the date.

THE COURT: I think that would help me.
We can get a little done today and tomorrow maybe it may be easier if I can have my own copy of the log, bring two, I have a friend who may want to look at it too.

MR. SLOTNICK: The first conversation, December 9, 1971, 1545 hours, Sam and Dennis and that is transcribed.

(Conversation played.)

THE COURT: I heard the conversation. Why do I have to hear it again?

MR. SLOTNICK: This is a further conversation.

THE COURT: Let us go on to the second.

(Conversation played.)

MR. SLOTNICK: One is transcribed.

THE COURT: A call of under one minute duration is marked not pertinent in the log and I have got it.

MR. SLOTNICK: Our argument as to that is the fact that it is a call that deals with a husband and wife, dealing with the purchase of steaks and the husband goes out to pick up steaks et cetera. Obviously that conversation should not have been listened to even for a minute. This conversation could have been turned off at the end of 20 seconds.

THE COURT: All right.

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2 MR. PEPPER: I didn't hear anything that
3 suggests this woman was a wife.

4 THE COURT: I didn't get the wife thing either,
5 actually. Since you are stating it is perhaps it is
6 on your reel, perhaps you can make a transcript of that
7 and give it to the Government and see if they dispute it.
8 If it is disputed I will listen to it again if you think
9 it is material. If it is not disputed show me the
10 transcript as part of your total submission on this.

11 MR. SLOTNICK: I suggest it be done but to use
12 earphones and in a smaller area because some of the words
13 your Honor may not catch are key words.

14 THE COURT: I find the same difficulty with
15 earphones but if you want to set it up tomorrow morning
16 with earphones go right ahead.

17 MR. SLOTNICK: I would prefer to.

18 The third call is 11.15, unknown male calling
19 information for a telephone number.

20 THE COURT: 11.10 p.m.

21 MR. SLOTNICK: On December 10, 1971.

22 THE COURT: It is 11.15 a.m.

23 (Conversation played.)

24 MR. PEPPER: Should I take note of the time
25 of each call?

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2 THE COURT: Mr. Slotnick and I have been talk-
3 ing back and forth at a great rate and Mr. Russel has
4 been writing down every syllable of it.

5 All right.

6 MR. FEFFER: I meant the actual duration of
7 the call.

8 THE COURT: I don't know who would be deemed
9 a suitable timekeeper. I have taken notes. I think it
10 is a good idea.

11 Now, who has a stop watch? For the record
12 I will tell you that I have noted the length of each of the
13 first three calls as follows:

14 The first one, which I heard yesterday before
15 we got to this organized operation, I have just written
16 in my notes was very long.

17 The second one I have written male-female, under
18 one minute.

19 The third one I described as 45 seconds but I
20 believe it would be desirable to have on hand a stop watch
21 which, if everybody is agreeable I guess I might ask
22 Mr. Swanciger to manipulate and then if anybody got his
23 own watch he could double check him. We could announce
24 the length of each of those calls at the end.

25 Is that agreeable, gentlemen?

1
2 MR. SLOTNICK: Agreeable to me, your Honor

3 THE COURT: Does the Government have its own
4 stop watch? It really ought to be a stop watch and
5 ought to be able to call out what is to be timed from the
6 first word to the last word so if you have 11 rings you
7 don't want the watch until somebody says hello but don't
8 stop the watches during pauses. From the beginning
9 or until hang up or cut off.

10 Can the Government through its facilities get
11 a stop watch here tomorrow?

12 MR. FEFFER: I think we should be able to get
13 one by tomorrow, your Honor.

14 THE COURT: All right. At least it is
15 useful to help create some procedural rules.

16 You are up to 11.20?

17 MR. SLOTNICK: That is right, to the Eron
18 School.

19 (Conversation played.)

20 THE COURT: 20 seconds.

21 MR. SLOTNICK: It would be argued by the defend-
22 ants that even though that call took 20 seconds the police
23 officers could have cut it off much earlier.

24 THE COURT: I understand that. I didn't make
25 a ruling. I have indicated to you that I am not going to

1 rs91

2 regard a 20-second call as very significant but you play
3 them and then argue later.

4 MR. SLOTNICK: December 10 of 1971, 12.40,
5 your Honor. This is an incoming call my notes indicate.

6 (Conversation played.)

7 THE COURT: I make it 40 seconds.

8 MR. SLOTNICK: This is logged in as Fat Beans
9 unless I am incorrect.

10 Is there a dispute on that?

11 MR. FEFFER: It doesn't reflect in the log.
12 It talks about Tommy Orville.

13 MR. FELD: It sounds like a female.

14 MR. SLOTNICK: I may be wrong on this log or
15 my technician may be wrong on this presentation. It is
16 probably an earlier call than that. I think he is thrown
17 off by the log where it said Fat Beans.

18 THE COURT: I don't know what your technician
19 did. I just heard the call you wanted me to hear and it
20 lasted 40 seconds and you say it is associated with a
21 call at 12.40 on the log.

22 MR. SLOTNICK: It is put in the log at 12.40,
23 Fat Beans and this call commenced with Fat Beans. However,
24 it is not a call logged in at 12.40. In all probability
25 it is an earlier call. Mr. Feffer is attempting to

1 rs92

2 find out.

3 The next call is December 10, 1971, 1325
4 between Don and Sleepy.

5 (Conversation played.)

6 MR. SLOTNICK: This is the 12.40 call.

7 THE COURT: It ended abruptly. Was it cut
8 off?

9 MR. SLOTNICK: I don't know. I would have to
10 check my log on that.

11 THE COURT: Where you ended I didn't hear any-
12 body say good-bye. I had 50 seconds. I didn't want
13 to cut it short. The only reason is it didn't sound as
14 though they were finished.

15 MR. SLOTNICK: I would suggest again I am
16 glad we did this and I will be able to bring the Sony
17 here and I can tell your Honor whether there is something
18 wrong with the tape or it is a continuation. My log is
19 geared into the Sony numbers.

20 MR. FEFFER: The counter number would have
21 nothing to do if the call is cut off in the middle.

22 THE COURT: All right, the last telephone call
23 was male and female. Was it 12.20 on the log preceding
24 this one which is 12.40?

25 MR. FEFFER: Right, and the last one was 12.40.

rs93

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THE COURT: Should I accept that? It appears to be correct.

Should I put 12.20 and 12.40 in my notes?

MR. SLOTNICK: That is correct, your Honor.

We can hold this for tomorrow and I can bring in my Sony.

THE COURT: I am willing to hold it for tomorrow and let you bring your Sony.

Somebody bring a stop watch and I will get out of the timing business. I hope we don't dispute it. I do invite you to check now how he does because I may want to dispute the first couple when he starts and stops. I will give back this log which has Mr. Feitell's legal arguments on it and laundry list.

The Government will bring another tomorrow.

We will adjourn until 10 a.m.

(Adjourned to September 25, 1973, at 10.00 o'clock a.m.)

1 ars

2 UNITED STATES OF AMERICA .

1294

3 vs.

73 Cr. 460

4 JOHN CAPRA, et al.

6
7 New York, September 25, 1973;
10.00 o'clock a. m.

8 (Hearing resumed.)

9
10
11 THE COURT: Are we now ready to proceed?

12 MR. SLOTNICK: We are ready.

13 THE COURT: I understand that the Government,
14 in spite of its valiant efforts and plentiful resources
15 was not able to generate a stopwatch. I have asked
16 Mr. Swanciger to use his personal wristwatch and the
17 sweep second hand thereof to announce at the end of each
18 of these recorded conversations the length in minutes and
19 seconds.

20 Everybody is invited to double check and if
21 anybody has any serious quarrel with the length that he
22 announces on the record, we will redo it.

23 Anybody disagree with that procedure?

24 (No response.)

25 THE COURT: All right.

MR. SLOTNICK: We are playing Exhibit P for identification and we will commence where I believe we ended up yesterday, with December 10, 1971, 12.40 in the logs.

THE COURT: We did that yesterday. Are you going to play that again?

MR. SLOTNICK: Yes, there was some question when it was cut off, your Honor.

(Conversation played.)

THE CLERK: 40 seconds.

MR. SLOTNICK: The next conversation is on December 10, 1971 at 1325.

MR. FEFFER: Was that last 12.40 or 12.20?

MR. SLOTNICK: 12.20 in the logs. That was the correction made.

MR. FEFFER: The next one is 12.40.

MR. SLOTNICK: The next one is between Don and Sleepy.

MR. FEFFER: Yes, that was a call made at 12.40, a call after this one we just heard. It was cut.

THE COURT: He is about to play that now. The one he just played I believe Mr. Slotnick incorrectly described as a 12.40 call. We are now agreed it is a 12.20 call between incoming male out female in the

rs3

jargon of the logs and now we are going to play a 12.40 call identified as Don and Sleepy on the logs.

MR. FEFFER: That is the problem. The 12.40 call, the one played yesterday as to whether it was cut is page 3 of the log and incoming male out male, Orvill at the bottom of page 3. That is the one I thought there was some confusion.

MR. SLOTNICK: This is the next call.

(Conversation played.)

THE CLERK: One minute and five seconds.

MR. SLOTNICK: Apparently the break we heard yesterday was some imperfection.

The next is 1320 between Don and Sleepy.

(Conversation played.)

THE CLERK: Two minutes 32 seconds.)

MR. SLOTNICK: December 10, 1971 at 1350.

(Conversation played.)

THE CLERK: Two minutes 45 seconds.

MR. SLOTNICK: That was 3040 in the logs and the defendant comment is apparently this was a husband and wife conversation.

The next conversation we have is on the same date at 1350 in the logs.

(Conversation played.)

rs4

THE CLERK: Ten minutes 38 seconds.

MR. SLOTNICK: Defendant's further comment,
this is a husband and wife call.

MR. FEEFFER: Is it being represented as a
known fact or what?

MR. SLOTNICK: As indicated by the conversation.

THE COURT: That is Mr. Slotnick's assertion
and I am willing to receive assertions about this and if
you have any reactions, since we may not want to do this
again many times, I will state the reactions.

I had the impression for some of those excit-
ing minutes that was a husband and wife call until a
passage where she informed him that the next day was her
birthday and it strikes me from the content and tone
of that portion of the conversation that they were not
husband and wife, not that I really think it matters but
if anybody wants to argue that later on, I give you this
reaction for what it is worth.

It is pretty clearly marked on the log not
pertinent conversation.

MR. FEEFFER: I have the remainder of the
transcripts to hand up.

MR. SLOTNICK: The context of the conversation
there was a declaration or at least an assumption it was

1 rs5

2 a husband and wife was the time prior to your Honor then
3 changing his assumption and therefore it is our contention
4 that it is reasonable to believe it to be a husband and
5 wife conversation and they should have shut it off.

6 We will key one other thing, your Honor, that
7 this is the first of a series of conversations with regard
8 to this watch business.

9 The next call is left out of the logs and it
10 appears to have been a call between 1455 and 1500. We
11 are not 100 per cent sure but it is not logged and it is
12 on December 10. That is my technician's guess.
13 I don't know how he based that.

14 (Conversation played.)

15 THE CLERK: Six minutes 14 seconds.

16 MR. SLOTNICK: Defendant's comment, your
17 Honor, that after the first 35 seconds 80 per cent of
18 the call thereafter is female-female.

19 MR. PEPPER: The Government would comment it
20 believes the call is logged at 1455. The reason why it
21 was male and female is because the male in fact was the
22 party who first picked up the phone.

23 Another observation was that during the middle
24 of the conversation there was a long discussion within
25 Diane's Bar and the male's voice said that the window was

1 rs6

2 no good and a discussion as to why the window would not
3 be good because the police officers, the cops would look
4 in which would be bad and finally another individual
5 gets on the phone, a male gets on the phone.

6 So during the course of the conversation,
7 which took place at the very beginning of the wiretap we
8 have three different people in one conversation at
9 Diane's Bar on the phone.

10 MR. SLOTNICK: The defendant contends that the
11 male-female portion of the conversation took five seconds
12 in which the male turned the phone over to Josie and
13 obviously a female who spoke to another female. At this
14 juncture the police had an obligation to shut off the
15 phone since their order only provided to those talking
16 to Joseph Della Valle.

17 After the first minute they certainly had an
18 idea that Joseph Della Valle was not a participant in that
19 conversation.

20 The next call is on December 10, logged in at
21 1807.

22 (Conversation played.)

23 THE CLERK: 32 seconds.

24 MR. SLOTNICK: The same comment for this, your
25 Honor, the officers early in the game realized that

rs7

Joseph Della Valle was not a participant in that conversation and should have cut it off.

December 10, 1972 at 1842 is the next call.

(Conversation played.)

THE CLERK: Three minutes 25 seconds.

MR. SLOTNICK: This is a call that the defendants the police should have shut off at the point where they heard about I got a phone bill today, after the child answered the phone, because they should have believed it was a husband and wife conversation.

We represent to the Court that that is the beginning of a series of conversations between Stephen Dellacava and his girl friend Jean Pino with the New Jersey number in the logs.

MR. FEFFER: I will confine the comment to this particular telephone call.

First of all, this is the voice obviously of Beansy, Stephen Dellacava. Secondly, nothing in the Government thinking in the course of the conversation indicates any husband and wife relationship.

Thirdly and most important is one comment there she makes at the very beginning of the conversation and says as follows, as best I can recall, "What do I get for my job as secretary?"

188

1
2 Eleven he says. I may have heard incorrectly.
3 It is my understanding from talking to people that monitored
4 those calls and people who have since listened that this
5 would give them reason to believe she was somehow involved
6 with him as a wife but very possibly involved in whatever
7 business he was conducting and the Government contends
8 he was heavily involved in narcotics. And the call was
9 cut. It may not have been cut in a minute and a half
10 but the conversation ceased, indicating that the call was
11 cut off.

12 MR. FEITELL: My comment with respect to that
13 obviously she was referring to having difficulty getting
14 through because the line was out of order, possibly
15 because of the tap and there is a lot of that going on
16 and reporting to him in effect she was having difficulty
17 with the line and says rather stupidly to him can you call
18 out and he answered of course I can call out I am calling
19 you.

20 With respect to the comment about what she
21 is getting paid for this type of secretarial work he
22 said nothing, not eleven.

23 MR. PEPPER: It wasn't his response but the
24 nature of the conversation, more or what she said to him.

25 THE COURT: All right. I have heard all your

rs9

various comments. The only comment I have is that I suppose police officers are not expected to infer that people are husband and wife just because one is a male and the other is a female and one has a child. They may know what other people know about relationships but I don't think it is very important.

MR. SLOTNICK: He is indicating there was some discussion about payment of a phone bill. I discussed this with my wife once amonth, your Honor.

December 10 at 1916 is another call of Stephen Dellacava who is subject to the order and he is speaking to his son Carmine.

(Conversation played.)

THE CLERK: One minutes eight seconds.

MR. SLOTNICK: Our contention with respect to this alleged call is that the voices of Dellacava and Della Valle, that the police officers did not even have a reasonable basis to believe that it was Della Valle.

MR. FEPPER: My own observation is that the conversation was totally inaudible and I don't see how they could decipher whose voice it is, especially the party on the outside line.

MR. SLOTNICK: I didn't find it to be inaudible.

December 10, 1972, my sheet indicates my

1 rs10

2 technician has not found this call in the logs, again
3 between Stephen and his son.

4 THE COURT: Has your technician placed it
5 approximately?

6 MR. SLOTNICK: Yes, approximately about 1918.
7 That is his best guess.

8 (Conversation played.)

9 THE CLERK: 38 seconds.

10 MR. SLOTNICK: Obviously this is a conversation
11 of a grown male with a son discussing his mother and the
12 male mentions mommy and there was ample proof to indicate
13 that the police knew that Joseph Della Valle was not married
14 and 23 and obviously could not have a grown son.

15 The next conversation is December 11 at 12.05.

16 (Conversation played.)

17 THE CLERK: One minute eight seconds.

18 MR. SLOTNICK: Our comment is this is a follow-
19 up to the call on the phone about the Hamilton watch
20 business and again this is another husband and wife con-
21 versation intercepted.

22 MR. FEEFER: This conversation was apparently
23 cut off, your Honor.

24 THE COURT: It sounds cut off to me.

25 MR. SLOTNICK: It did to me too and early in the

1 rsll

2 ball game the police officers could have recognized it as
3 obviously a non-pertinent phone call, not between Joseph
4 Della Valle and it has no narcotics related discussion.

5 THE COURT: Sitting here when they get to
6 the Hamilton and the Longines and the Bullova, a police
7 officer would have cut it off sooner. I suppose when I
8 go through this, however I will have to take into account
9 the officers didn't necessary hear them one after another
10 and were not necessarily the same officers. You may
11 want to argue about this, another slight measure of
12 artificiality in our listening, which is one of the con-
13 siderations, which touches one of the considerations that
14 has led me to think that unless you get in the vicinity
15 of a minute and a half or two while an officer zeroes in on
16 the thing, considering that you are listening in a public
17 phone and whatever the disadvantages are, you don't have
18 serious intrusions once you agree that you can tap a public
19 phone at all.

20 I just tell you this so you understand what I
21 sort of have in mind.

22 MR. SLOTNICK: We have indicated that we are
23 troubled with the first premise about tapping a public
24 phone. There are different considerations with a public
25 phone versus a private phone.

1 rs12

2 December 11, 1972 at 12.25, apparently the
3 next conversation.

4 (Conversation played.)

5 THE CLERK: 48 seconds.

6 MR. SLOTNICK: Our comment is that the parties
7 were identified at a time when the police officers could
8 have shut off, once they realized that the conversation was
9 between Petey and Ziggy.

10 MR. FEFFER: My only comment is it is an example
11 of one person on the telephone and another person later
12 in the conversation getting on the phone. This is a
13 pattern which I think repeats itself time and time again,
14 many people getting on the phone during the course of one
15 conversation.

16 MR. SLOTNICK: Our reply is that the individual
17 picking up the phone is Beansy who the police believe is
18 Joseph Della Valle and he gets on the phone.

19 December 11 and this begins at 1415.

20 (Conversation played.)

21 THE CLERK: Three minutes 31 seconds.

22 MR. SLOTNICK: The first comment that appears
23 to me to be a husband and wife conversation. Apparently
24 I am rather old-fashioned.

25 The second comment is that there was no excuse

1 rsl3

2 for listening to this past the first 20 seconds. Obviously
3 not a Della Valle call and a child involved at the begin-
4 ning, either a wife or girl friend picks up the telephone
5 call and I don't think one could find the voices remotely
6 were that of Joseph Della Valle.

3 7 MR. FEFFER: Just this, your Honor, that again
8 we submit it is difficult to determine whether an individual
9 talking is the wife and on December 11, 1972 it very well
10 could have been possible that this individual may have been
11 the subject, the deep voice and other characteristics.

12 MR. SLOTNICK: December 11, your Honor, at
13 1425, back to the watches.

14 (Conversation played.)

15 THE CLERK: 23 seconds.

16 MR. SLOTNICK: This was obviously a short recall
17 within your Honor's guide lines. However, the reason we
18 played this, it is a continuation of a prior conversation,
19 one of the voices had to be at least known at that time,
20 at this point, to the officer monitoring and the voices were
21 identified. It should not have been listened to even that
22 far.

23 The next conversation is December 11 at 1422
24 and we go back to the watches.

25 (Conversation played.)

THE CLERK: Three minutes 41 seconds.

MR. SLOTNICK: My only comment about this is it happens to be a husband and wife conversation. They should have cut it off knowing that was not Beansy on the telephone.

MR. FEEFFER: I don't see any conversation about 1422 in the logs and the impression was created it was the next conversation after the preceding one.

THE COURT: All right.

MR. FEEFFER: It is our contention this conversation did not occur at 1422 or right after the previous conversation.

MR. SLOTNICK: May I have just a moment to check that? My technician apparently found it was 1422 and I am trying to clear it up.

Apparently this is one of the calls that was not logged. He found this to be the follow-up conversation which is actually extremely reasonable in view of the fact they relate one to another. The first conversation at 1420 deals with Longines watches and a calendar and the second conversation which allegedly takes place some two minutes later Jack tells his wife he got watches with calendars on it. So it is not inconceivable that they happened one after another and apparently they did and it is

1 rs15

1302

2 just not logged.

3 We would present the actual tape to your Honor
4 and find those two conversations and represent they follow
5 each other.

6 MR. FEITELL: There is a referral in the
7 second call to an intermediate call from the recipient
8 of the gift. I don't know if we ever heard that call.

9 MR. FEFFER: That would go against what
10 Mr. Slotnick is saying. There was a reference to an
11 intermediate call which indicates that it did not follow.

12 THE COURT: Mr. Feitell, you are in a poor
13 position. You have assured me you haven't listened to
14 these tapes.

15 MR. FEITELL: I didn't listen to them in their
16 entirety.

17 THE COURT: Do you know whether this call which
18 is part of your selected tape follows immediately on the
19 original tape or do you not?

20 MR. FEITELL: I don't.

21 THE COURT: Then don't say.

22 MR. FEITELL: I don't recall having heard the
23 intermediate call.

24 THE COURT: But you don't know whether it does
25 or not. This is a selection of calls.

1 rs16

2 MR. FEITELL: What he heard on the secondary
3 tape.

4 THE COURT: Let us not speculate. If you want
5 to play that for me and find out if there was an inter-
6 mediate call you may do so.

7 MR. FEITELL: The call is certainly very
8 closely placed.

9 THE COURT: I have heard a few things that seem
10 less important than the chronology of these two calls but
11 if you think it is important settle this in an appropriate
12 way later on.

13 MR. SLOTNICK: At this point that is our
14 sample extract from what we call reel 1 which is the first
15 reel of Diane's Bar.

16 We then go to December 12, 1971 which is reel
17 2-A.

18 At 12.52, page 7 of the log, it appears to be
19 the second call of the day, your Honor.

20 (Conversation played.)

21 MR. SLOTNICK: Again, a watch conversation.

22 THE CLERK: One minute 35 seconds.

23 MR. SLOTNICK: We contend that to be a question
24 again of a husband and wife conversation, unquestionably a
25 husband and wife conversation apparently relating to the

1 rs17

2 Christmas season and the mention of watches again.

3 MR. PEPPER: My own observation is that the
4 call was cut off.

5 MR. SLOTNICK: Our contention is it was cut
6 off too late, it should have been earlier at the identi-
7 fication of the parties.

8 We now go to December 12, 1971, the time is
9 12.45 and that is at page 7.

10 (Conversation played.)

11 THE CLERK: 20 seconds.

12 MR. SLOTNICK: The reason we played that one
13 is ample at the beginning of the conversation. There is
14 a flat statement Beansy was here and if it is true the
15 officers believe that Beansy is Bella Valle they shouldn't
16 have continued any further. Apparently they were still
17 probing.

18 MR. PEPPER: After 25 seconds the call was
19 cut off, terminated.

20 THE COURT: That was one cut off, is that
21 correct?

22 MR. SLOTNICK: That appears to be correct.

23 MR. PEPPER: Yes, it was.

24 MR. SLOTNICK: December 12, 1971, we find the
25 call not to be in the logs between 1345 and 1443 and it

1 rs18

2 is a rather short call but refers to the fact that Beansy
3 is not there and the police keep on listening.

4 (Conversation played.)

5 THE CLERK: Five seconds.

6 MR. SLOTNICK: The other reason is to indicate
7 the call is not in the log which is a sort of strange
8 incidence to understand, why some of these calls are not
9 logged.

10 MR. FEFFER: My only comment would be if
11 Mr. Slotnick is going to persist in this point that the
12 calls are not in the logs --

13 MR. SLOTNICK: I will, your Honor. It would
14 be a point in our brief eventually.

15 December 12, 1971 --

16 THE COURT: Wait a second.

17 How are you planning to do that? Am I supposed
18 to remember these?

19 It seems to me I am going to cut you off from
20 saying -- let's say you claim this is not in the log but
21 how are you going to work this to prove it?

22 I will direct you now, both sides, to get
23 together this evening, this is not the eve of any holiday
24 and on all of these that it is claimed not to be in the
25 logs, I want you to tell the call with respect to which

1 rsl9

2 this assertion is made and the reel from which it comes
3 and sit together and listen and agree that they are
4 either logs or not logs and then come back tomorrow and
5 with respect to each one of these, report the results
6 of that conference. That is to say, report in each
7 instance whether the Government concedes the correctness
8 of Mr. Slotnick's assertion that something is not in the
9 log or, if this occurs that Mr. Slotnick withdraws that
10 assertion.

11 Is that clear, gentlemen?

12 MR. FEFFER: Yes, your Honor.

13 MR. SLOTNICK: For the record, reel 2-A, between
14 1345 and 1432, female asking for Beansy.

15 The next call is 1443, the same date.

16 (Conversation played.)

17 THE CLERK: 52 seconds.

18 MR. SLOTNICK: A call between Mr. Della Valle
19 and his wife.

20 MR. FEFFER: My only comment is that Mr.
21 Slotnick keeps persisting that certain people are wives and
22 again my own observation is that this can't be ascertained
23 from this telephone call, as to the identity of the
24 woman he is speaking to.

25 THE COURT: There was an old shoe quality of

rs20

the conversation that sounded to me as though the trier of the fact might infer it was a husband and wife; whereas some of those perhaps reflecting a more blissful quality of Mr. Slotnick's marital situation and are more amorous and lyrical in tone, are not necessarily husband and wife conversations.

I am not a Domestic Relations Court but I give you these reactions for what they are worth as we proceed.

MR. FEFFER: Of course, there is the shortness of the conversation.

THE COURT: All right.

MR. SLOTNICK: The next conversation is at 1512 and we find Mr. Dellacava now speaking to his girl friend.

(Conversation played.)

THE CLERK: Four minutes 42 seconds.

MR. SLOTNICK: Obviously between Mr. Dellacava and his girl friend.

The comment I would make is it is not only not pertinent but should have been cut off long before that but it was a conversation have an inference to lead reasonable individual to believe that Carmine is either a son, brother, member of the family and the insurance is obviously his car insurance and the police have no facts

1 rs21

2 to believe that anybody identified with Joseph Della Valle
3 was Carmine.

4 MR. FEFFER: May I respond to that?

5 The first telephone conversation speaking in
6 terms of the secretary and the accountant and now they talk
7 in terms of picking up the car and go through the process
8 of determining when the child will be home from school
9 and make an appointment for 2 o'clock in the morning which
10 just on its face, listening to the conversation gives
11 one the impression that 2 o'clock in the morning is hardly
12 consistent with what time a child would supposedly get
13 home from school and that is giving the officers reason to
14 believe this woman might have more to do with his business
15 than you can tell from listening to the normal course of
16 the conversations.

17 THE COURT: All right.

18 MR. SLOTNICK: December 12, 1971 at 1535,
19 Mr. Dellacava returns to speak to his girl friend.

20 (Conversation played.)

21 THE CLERK: 38 seconds.

22 MR. SLOTNICK: Comment we have, there is
23 evidence that the police did not believe that Mr. Dellacava
24 tended bar and the conversation says I am tending bar.

25 MR. FEFFER: One further observation, the

rs22

reference in the conversation to picking up this car, that reference to the fact that the word car has been used in narcotics parlance in the past to indicate other things than an automobile. In fact, a subsequent conversation between Dellacava and Capra the Government argues very strenuously when they make reference to the word car in that context that they certainly are not talking about an automobile but talking about as Eaton testified, more likely a kilo of heroin.

That coupled with the meeting at 2 a.m. certainly would give the officers reason to listen to a conversation.

MR. FEITELL: My comment is that the reference to the 2 a.m. feature was the delivery of the car for repair purposes and the context of both conversations illustrates this was a car that needed repair and the car was being dropped off in Jersey to be serviced.

MR. FEFFER: And Mr. Dellacava does not live in New Jersey.

MR. FEITELL: But this girl friend does and that is fairly obvious from the 201 area code.

MR. SLOTNICK: December 12, 1971, we have a series of calls, six consecutive gambling calls that span 12 minutes, all gambling calls and we allege that the police had no right

1 rs23

2 to listen to these conversations at all, especially from
3 the beginning when they learn they were gambling calls
4 and each follow-up call. This would be a 12-minute span
5 of six conversations.

6 THE COURT: I want you to stop each one so you
7 can continue to take down the statistics, which may or
8 may not be material, as to the length of each one.

9 We now know there was a series of six but
10 whether there is a cop knowing there would be a series of
11 six could arguably be a different question. Let us do
12 them the same way and argue about them together or
13 separately later on.

14 (Conversation played.)

15 THE CLERK: One minute 37 seconds.

16 MR. SLOTRICK: Again, our comment is that
17 obviously was a gambling call and the police listened to the
18 bets for the odds, not being that familiar with gambling,
19 but understanding there are odds given apparently on foot-
20 ball teams. The man ponders in his mind, makes the bets
21 and the bets are repeated to him. It should not be
22 listened to.

23 MR. FEFFER: This is another illustration of
24 a second party getting on during the course of one conversa-
25 tion and also, as Mr. Slotnick amply knows, a crime being

1. rs24

2. committed on the telephone.

3. MR. SLOTNICK: The next call is at 1550.

4. (Conversation played.)

5. THE CLERK: 52 seconds.

6. MR. SLOTNICK: Obviously a follow-up call, the
7. man received the bet, called a gambling parlor or calls
8. the office to place bets. In 52 seconds it is obvious
9. this is what he is doing and repeats the prior conversa-
10. tion with regards to bets placed by the first man.

11. MR. FEFFER: I would only comment that I don't
12. see any logic of anyone then being able to determine that
13. was necessarily a follow-up conversation and also it
14. relates to a crime being committed.

15. MR. SLOTNICK: It is repetitive the man on
16. the phone just repeats what he had in the other call.

17. The next call is 1551.

18. (Conversation played.)

19. THE CLERK: 57 seconds.

20. MR. SLOTNICK: Again, apparently the same
21. individual on a gambling call. To be noted for the
22. record that instead of listening to these phone calls it
23. was suggested that apparently, as Mr. Feffer says, these
24. are illegal calls called into a bookmaker. It is
25. interesting to note that none of the phone calls to the

rs25

bookmakers was the Penn Register working and the police could have been working attempting to find out who the bookmaker was.

MR. FEFFER: I missed the last point.

MR. SLOTNICK: I am just saying that the other phone numbers apparently appear and this is the first place that I have spotted during the course of the day that the Penn Register fails to register the phone number.

MR. FEFFER: The same comment with respect to the preceding telephone call.

THE COURT: All right.

MR. SLOTNICK: In a series of bookmaking calls the Penn Register fails to register.

The next is a conversation at 1555.

(Conversation played.)

THE CLERK: 58 seconds.

THE COURT: The record should show now the narrow margin of error our deputy clerk operates with in. He said fifteen seconds.

MR. SLOTNICK: 1555 is the next call.

(Conversation played.)

THE CLERK: 18 seconds.

MR. SLOTNICK: The defense contention again, which I think we have reaffirmed throughout the proceedings,

1 rs26

2 the count of seconds is not indicative of the problem of
3 minimization, that they should have shut the machine off
4 realizing this was the same man who called before and
5 calling in apparently and taking bets in a bar. This is
6 the only reasonable conclusion one could reach.

7 The next call is 1600 and is a continuation of
8 this series of calls.

9 (Conversation played.)

10 THE CLERK: 47 seconds.

11 MR. SLOTNICK: Again, the same individual call-
12 ing into his office, the Penn Register is not working.
13 I would tend to think that the invasion of privacy at this
14 point has been demonstration with regard to this, but
15 we have one further call which finalizes this entire series
16 of bookmaking calls, 1600.

17 (Conversation played.)

18 THE CLERK: 13 seconds.

19 MR. SLOTNICK: There are six consecutive
20 gambling calls which span about 12 minutes.

21 THE COURT: Some of your comments are not
22 terribly helpful. I have written down the time of each
23 of those six calls and it is just not 12 minutes. The
24 record shows what they are. Let us limit your comments
25 to things that are pointedly useful and not to things that

rs27

just kind of gratuitously contradict what the record shows.

MR. FEFFER: Just one comment, the Penn Register is working on the last call, giving the outgoing number and more important I don't think there is any indication from any of the preceding calls that the subsequent call would be a following telephone call.

THE COURT: Let us go on.

MR. SLOTHNICK: The next call is at December 12, 1971 at 1605, which is the following call.

(Conversation played.)

THE CLERK: 44 seconds.

MR. SLOTHNICK: Our comment, the male identified himself and the other party was a female and there would be no question this is not Joseph Della Valle on the telephone, discussed a completely innocuous circumstance and the officer should shut it off instead of continuing to listen.

The next conversation on December 12, 1971, the following conversation, 1608. I have "No answer" in my log. I don't know what that means.

(Conversation played.)

MR. SLOTHNICK: On December 12, 1971 at 1609 there is a call and we are going to show the next three

rs28

calls as being all consecutive calls, not minimized.

I understand your Honor wants them stopped at the end of each call and I will do so.

(Conversation played.)

MR. FEFFER: There is a transcript of this conversation.

THE CLERK: 35 seconds.

MR. SLOTNICK: Again, your Honor, no reason to listen to that conversation even for as long as 35 seconds.

The next conversation is at 1609 and in the logs we have it as an incoming call, apparently Beansy is on and the other party is Ernie.

(Conversation played.)

THE CLERK: 15 seconds.

MR. FEFFER: I would comment on this call that it is an indication in one telephone conversation of two additional people and an individual known as Shadow and his name appears more than once, an indication of numerous nicknames these officers have to deal with.

MR. SLOTNICK: December 12 at 1630, male-female as marked in the logs.

(Conversation played.)

THE CLERK: 47 seconds.

MR. SLOTNICK: The next call is at 1640 which

rs29

is a male and Beansy's wife looking for Beansy.

Your Honor will recollect we went into that at the hearing.

(Conversation played.)

THE CLERK: Eight seconds.

MR. SLOTNICK: The conversation referred to which I cross-examined Detective Eaton about.

MR. PEPPER: Another reference to a nickname, Jap which appears in many of these conversations.

MR. SLOTNICK: 1740, your Honor, is a female-female conversation.

(Conversation played.)

THE CLERK: 47 seconds.

MR. SLOTNICK: Again, armed with an eavesdropping warrant for a male Joseph Della Valle the police continue to listen to two females knowing that not one could be Joseph Della Valle.

MR. PEPPER: Again, the nature of the phone call, the parties constantly changing people who were on the Diane Bar telephone, listening for a length of time of 47 seconds to determine whether another individual will get on is reasonable. Originally we had two women speaking and a male gets in the conversation.

MR. SLOTNICK: December 12, 1971, 2000. This

1 rs30

2 is transcribed.

3 (Conversation played.)

4 THE CLERK: One minute and nine seconds.

5 MR. FEFFER: I would like to comment on this
6 conversation. It is another example of more than one
7 person using the phone at Diane's Bar; another indication
8 of many nicknames these people are confronted with and
9 possibly more important is the reference to the word scuff
10 and boxes, commonly used for narcotics, for heroin and
11 cocaine.

12 MR. SLOTNICK: Your Honor, with regard to the
13 many nicknames used, there is an individual that pervaded
14 these eavesdroppings, Petey Bones. Apparently that is what
15 he is called. I don't think he would be different had
16 he been called Pete, that is his name and how people call
17 him. There was an individual called Shadow, his name is
18 probably George or something. So the fact that they say
19 Shadow instead of George I don't think is unusual to me.
20 There is no question that Joseph Della Valle was not a
21 participant, which is uppermost in my mind and this phone
22 conversation should have been shut off and I don't think
23 there was a danger that he was going to spring in. It is
24 a dangerous thing because the Courts are arming the police
25 with general warrants.

1 rs31

2 The follow-up phone call at 12.12 and 2025,
3 a female asking for Beans.

4 (Conversation played.)

5 THE CLERK: 10 seconds.

6 MR. SLOTNICK: The next call is at 2030 and
7 again is the following call following these consecutive
8 calls for illustrative purposes Mr. Dellacava is known as
9 Beans on those phones and speaking to his girl friend
10 Jean. This is at 2030 and an outgoing call from Mr.
11 Dellacava to his girl friend and the log says male-female
12 and ultimately identified as Dellacava and Jean Pino.

13 (Conversation played.)

14 THE CLERK: Two minutes five seconds.

6 15 MR. SLOTNICK: The only thing I can say is the
16 log says non-pertinent call.

17 The next call --

18 THE COURT: I note that the call which you have
19 described initially as Beansy and his girl friend is noted
20 on the log as male-female. But I think those of us who
21 sit here, having heard this much, would probably agree
22 that it is Beansy and his girl friend.

23 MR. SLOTNICK: Yes, your Honor.

24 MR. FEITELL: I would like to ask is your Honor
25 working with the same log we are working with, the initial

1 rs32

2 copy of the log? The copy we are working with has various
3 names interposed over the male and female.

4 THE COURT: The one I have for this call says
5 male-female. You look at your copy and tell me what you
6 are working with. Let us proceed.

7 MR. SLOTNICK: My copy says female and on the
8 top it says Dellacava and Jean Pino.

9 THE COURT: Then we are working with one that
10 the police officer originally wrote down. You have some-
11 thing written at some later point when somebody acquired
12 the kind of knowledge we all now have too. But I am
13 making this observation because it makes a difference
14 whether on December 12 an officer knew it was Beansy and
15 his girl friend or thought it was a male and female and we
16 might as well have that all out on the table so we know
17 what we are dealing with.

18 All right.

19 MR. SLOTNICK: Now, December 13, 197, your
20 Honor, at 1807.

21 (Conversation played.)

22 THE CLERK: Two minutes and 26 seconds.

23 MR. SLOTNICK: December 13 at 1812, asterisks
24 are in our logs. Is it in your Honor's?

25 THE COURT: Yes.

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rs33

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MR. SLOTNICK: Incoming call and this is

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transcribed.

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(Conversation played.)

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THE CLERK: Two minutes ten seconds.

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MR. FEFFER: Only one comment on this, this is

7

another example of a change of parties in a conversation.

8

In language like did he get that and a background conversa-

9

tion about this will be brought over tomorrow.

10

MR. SLOTNICK: I'm afraid I don't understand

11

the comment about the background conversations.

12

MR. FEFFER: The background comment about did

13

he get there. I will ask for the car tomorrow and he

14

is cut off.

15

MR. SLOTNICK: It appears that almost anything

16

in the universe could be interpreted as a criminal conversa-

17

tion, including parts of this record and I feel that a

18

fair inference could be drawn that this was not a narcotics

19

related conversation with, by or between Joseph Della Valle.

20

December 13, your Honor, at 1954, we have a call

21

between Beansy and his wife and it is so logged.

22

(Conversation played.)

23

THE CLERK: One minute eight seconds.

24

MR. FEFFER: It certainly is not Beansy

25

Dellacava on this phone, your Honor.

1
2 THE COURT: That was not?

3 MR. FEFFER: Certainly not.

4 THE COURT: I thought maybe it was. It says
5 Beansy and it is not.

6 Do you think it is?

7 MR. SLOTNICK: I don't think it is, Judge.

8 THE COURT: Let us hear it again.

9 (Conversation replayed.)

10 THE COURT: I agree, I am wrong.

11 MR. FEFFER: I think that Mr. Slotnick has
12 demonstrated exactly the point these officers were making
13 if Mr. Slotnick originally heard Mr. Dellacava speak for
14 four or five months.

15 THE COURT: I am right here listening. Why
16 don't we just proceed. They thought it was Beansy and I
17 thought it was. We all agree it is not Beansy and
18 certain things may follow. You can argue later.
19 I said the officer thought it was Beansy. I assume they
20 thought it was Beansy.

21 MR. SLOTNICK: That is correct. I purposely
22 mentioned there comment it was Beansy and his wife indicat-
23 ing if they thought it was Beansy and his wife they shouldn't
24 have listened anyhow. But it turned out now to be Beansy
25 and the first invasion is worse. They should have cut

1 rs35

2 it off. It meant they thought it was Beansy and his
3 wife, and the topic of the conversation was not narcotics
4 related, and by listening to the voice they could have
5 found this was not again part of the order, the voice of
6 a 23 year-old man and the voice of a 23 year-old man's
7 wife or that it might be possible.

8 THE COURT: All right.

9 The call before this one had to deal with a
10 man who cleans ceilings, who is supposed to be out of work
11 but on the phone was found to be working. Mr. Feffer
12 commented that this call was cut and I have the transcript
13 in front of me and it doesn't say the call was cut.
14 Apparently the police officer wrote connection broken or
15 hang up and that wasn't a cut call. That is the way it
16 is listed. I guess I apologize, I didn't hear Mr.
17 Feffer.

18 Did you say that the prior one was cut?

19 MR. FEFFER: No, your Honor.

20 THE COURT: Anyhow if he said it I didn't write
21 it down.

22 MR. FEFFER: They thought it was a cut call
23 but apparently it does say connection broken.

24 THE COURT: I wrote in my notes as a cut call.

25 MR. FEFFER: May I make one point? I was

1 rs36

2 informed this morning that the Court of Appeals has affirmed
3 the case of U. S. versus Bynum.

4 I do not have a copy of the opinion and I am
5 not sure I can get one but I will make every effort to
6 do so.

7 THE COURT: All right.

8 2.15, gentlemen.

9 (Luncheon recess.)
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AFTERNOON SESSION

(2.15 p.m.)

THE COURT: I saw some people in the witness room. Does that mean you want to put them on?

MR. FELD: Yes, your Honor.

THE COURT: This is in connection with the search in Toledo.

MR. FELD: Yes, sir.

THE COURT: We will interrupt our listening to take that evidence.

Is that agreeable?

MR. SLOTNICK: Of course, your Honor.

We would indicate that on the Tanberg we are now up to 377.

MR. FELD: Milton Julert.

--

M I L T O N J U L E R T , called as a witness by the Government, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. FELD:

Q Mr. Julert, will you speak up so everybody can hear you.

Are you presently employed?

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2

A No, I am retired.

3

Q Prior to the time that you retired where were you employed?

4

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A The Penn Central Railroad.

6

Q What city?

7

A In Toledo, Ohio.

8

Q How long had you been employed by the Penn Central Railroad?

9

10

A 46 years.

11

Q In October of 1971, can you tell us what your duties were at that time?

12

13

A I was baggage agent.

14

Q Did you have that assignment on October 20, 1971?

15

16

A Yes, sir.

17

Q On that date did you have occasion to check in a certain suitcase at the terminal in Toledo, Ohio?

18

19

A I did.

20

Q Where did that occur?

21

A At the checkroom, the baggage checkroom.

22

Q Can you tell us what facilities there were at the railroad terminal at that time for checking parcels or suitcases?

23

24

25

A Well, we did three different things. We

checked baggage through on trains. We checked baggage temporarily as a holdover; and we also had parcel lockers up in the depot.

Q At the time that you checked in this particular suitcase, did you have any other suitcases which had been parcel checked?

A No, sir.

Q When was the last time prior to that?

A Probably six months before that.

Q Approximately what time did you check in this suitcase?

A A man came in at approximately 11.13, I put the check on and looked at my watch and it was exactly 11.15.

Q Tell us in your own words what happened at that time?

A I was at my desk, the second desk from the doorway making out a report on the train that had just left in order that I might notify the clerk of the consist of the train.

The man came in and raised his case up, placed it down on the counter. It was a dark, probably call it a black or charcoal gray suitcase.

I walked up to him and a train had just left and it had arrived in there at Toledo five minutes early,

rs40

Julert-direct

and, according to the rules and regulations of the Interstate Commerce Commission, if a train arrived early it was allowed to leave five minutes ahead of time. So the train left at 11.10.

This man got in there approximately 11.13, so I didn't know whether he had missed the train or not.

Anyhow, I asked him if he wanted to check the bag through on the train or whether he wanted to leave it there temporarily. He said I want to leave it here.

I told him it would be 50 cents, so I made out the check and he said I will pick it up in a day or two. So I mentioned to him if you are going to leave it here I would rather you take it up to the lockers in the depot because after 7 or 7.30 there is nobody here to protect it although we lock up the room but there is nobody around at night.

He says, "I want to leave it right here." So I looked at him because I didn't know why he was getting hostile and took a good look at him but I gave him the check, he gave me a dollar bill and I gave him a new 1971 half dollar in change. I remember that.

He walked out, then I went back to my desk and sat down and the window where I sat was approximately the lower part of my chest. I could see him walk through

rs41

Julert-direct

there with some truck out there. I didn't see whether he went on the elevator or not but he was walking toward the elevator.

Q After you had the suitcase what did you do with it?

A I took the suitcase back in the former cashier's office, a large cage you might call it, and I put it in front of a filing cabinet on the floor.

Q Now, what did you do in regard to the suitcase after that?

A About five minutes later I had to get some forms out of the drawer in the lower filing cabinet. The suitcase was in the way and I picked it up. I was squatting. I picked it up by both ends and as I lifted it I realized that it had been before but I noticed it was heavy and it seemed to be compactly filled, not like ordinary clothing.

I started to place it on the carton right around the side and as I did this the thought just went through my head, well, this guy acted funny, he was nervous and tense like he wanted to get out of there in a hurry and I had in my mind, the thought just went through my mind, fleeting, he may have a bomb in there because there was a lot of that going on but anyhow I lifted the case up and shook it back and forth and there seems to be a rustling

rs42

Julert-direct

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2 like cellophane or plastic, just a slight rustle, barely
3 hear it.

4 Q Did you do anything else with the suitcase at
5 that time?

6 A Later before I left that night I took the suit-
7 case and put it in the knee-hole part of the desk so nobody
8 could see it from the outside and I locked the cage up
9 and locked the office up and I left.

10 I notified the janitors to keep an eye on the
11 suitcase, the parcel checked in there.

12 Q Do you know a Mr. Charles Sibold?

13 A Yes, sir.

14 Q How do you know him?

15 A I worked with him since -- he started working
16 there in 1929 and I started in 1926.

17 Q Was he working there on this particular day?

18 A He was working a relief job, he covers my job
19 on my days off, two days a week and the other three days
20 he works in the ticket office.

21 Q Did you have occasion to speak with him on the
22 day the suitcase was checked in concerning the suitcase?

23 A I believe he came down to bring some company
24 mail from the ticket office and I mentioned to him --

25 MR. SLOTNICK: Objection, your Honor.

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Julert-direct

1336

THE COURT: Yes.

What is the grounds?

MR. SLOTNICK: Hearsay.

THE COURT: No, overruled.

Go ahead.

A I just mentioned the fact to him when he came down, I says, "I am off tomorrow and Friday, there is a suitcase here parcel checked and I put it under the knee-hole part of the desk so you won't miss it."

I just wanted to notify him if it is here after tomorrow there will be storage on it.

Q Do you mean another 50 cents?

MR. McALEVY: I didn't hear that.

(Answer read.)

Q Do you mean another 50 cents?

A That is right, after the first 24 hours.

Q Were you off the following day?

A Yes, sir.

Q Did you return to work on the following Saturday?

A Saturday, yes, sir.

Q Was the suitcase still there?

A Yes, sir.

Q Did you work on Sunday?

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A Yes, sir.

3

Q I take it it was still there at that time?

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A It was.

5

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Q Now, did there come a time when you again spoke to Mr. Sibold about this suitcase?

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A I am sure it was Tuesday afternoon, he came down with more mail from the ticket office and mentioned the fact to him that the suitcase was still there.

10

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On Wednesday he came down again and we were talking about it. The thing that worried me was the fact that it was there all night and there was nobody around and it might accidentally somehow or other come up missing. So Mr. Sibold and I agreed that we should possibly better notify the Penn Central Police Department about it.

16

17

Q That conversation took place on October 26, Tuesday?

18

19

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A We talked about it on Tuesday and Wednesday we mentioned the fact about calling the Police Department.

22

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Q Were you on duty on Thursday, the following Thursday?

A No, I wasn't.

MR. FELD: I have no further questions.

CROSS EXAMINATION

BY MR. McALEVY:

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rs45

Julert-cross

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Q Now, Mr. you say that you first saw the suitcase on October 20, is that correct?

A That is right.

Q You know the exact time that the case was first seen by you?

A I wouldn't say the exact time but it couldn't have been more than two minutes prior to 11.15 because at 11.15 I looked at my watch.

Q There were No other bags in that storage area at that time?

A There were other suitcases that had been checked through by train but no parcel checks.

Q When you say on the parcel will you explain?

A Baggage left there by a party temporarily to be picked up later.

Q But you did have facilities to keep those bags in that cage, did you not?

A We had facilities but they weren't good facilities.

Q But you took money for that service, did you not?

A That is right.

Q I believe you testified that in six months, it was six months since someone left a bag overnight?

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Julert-cross

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A That is right.

Q After this man paid his money and you gave him
a check -- is that correct?

A That is right.

Q You put the bag in the cage area?

A That is right.

Q By the way, where is your office located in
respect to the terminal itself?

A On the ground floor.

Q Mr. Sibold, where did he work?

A He works up in the ticket office on the third.

Q What is your title?

A Baggage agent.

Q And Mr. Sibold's?

A Relief assistant baggage, relief baggage agent
and ticket agent.

Q He only worked two days a week as baggage man,
is that the fact?

A That is right.

Q What two days?

A Thursday and Friday.

Q What day of the week was October 20?

A Wednesday.

Q Then you were going to get the next two days

1
2 off?

3 A That's right.

4 Q You said that you first, after the man left,
5 and I believe you characterized it as being hostile to you?

6 A I wouldn't say he was hostile, I wouldn't know.
7 I wondered because he pointed and says, "I want
8 it left right here."

9 He raised his voice and so on and then I thought,
10 I was puzzled for the minute, that is why I looked up.

11 Q Did it engender fear or suspicion with respect
12 to the contents of that bag?

13 A Not necessarily. The only thing I wondered
14 was why the man acted that way and why he was nervous and
15 wanted to get out of there so quick.

16 Q The train had left?

17 A That is right.

18 Q The train had left?

19 A That is right.

20 Q Is that a congested area?

21 A No, it isn't.

22 Q Wasn't it normal for a man to want to just
23 leave the area and go where he has to go?

24 A I suppose so, yes, sir.

25 Q But you say he had to get out of there quick.

rs48

Julert-cross

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2 A I didn't said he had to. He acted like
3 he wanted to get out in a hurry and seemed to be nervous
4 and tense.

5 Q Can you tell me what you thought to be nervous
6 and tense about this man?

7 A Well, he just got loud and acted like -- to me
8 for a minute I wasn't looking at him at the time, he
9 sounded belligerent, like he was hostile and I imagine
10 anybody would do the same thing or think the same thing.

11 Q So in other words he was hostile to you?

12 A I wouldn't say so. I am not sure. I just
13 wondered.

14 Q Now, you wondered to such an extent that you
15 watched this man as he left?

16 A No, I just glanced up from my desk and I saw
17 him walking toward the elevator and just forgot about it.

18 Q What is the next thing you did after you
19 glanced up and saw the man walking toward the elevator?

20 A I was writing out this train consist and
21 walked back to the filing cabinet to get some forms from
22 the lower drawer drawer. Like I explained, I picked
23 up the case to put it out of my way.

24 Q Where was it?

25 A Sitting right in front of the filing cabinet.

rs49

Julert-cross

Q On the counter?

A No, on the floor.

Q Didn't you testify that the man put the bag on the counter when he first came in?

A That is right.

Q How did the bag get from the counter down to the floor?

A I took it over there.

Q How far a distance is that, sir?

A Probably 20 feet.

Q So you took this bag from the counter, you walked 20 feet with it over to put it on a floor back in the cage, is that right?

A That's right.

Q At that time did you feel the weight of that bag?

A Yes, sir.

Q At that time did you hear any swishing?

A No, I had it down probably around my knees, in my hand.

Q How was this counter that you had this bag on, how high?

A Well, probably -- probably came up about here on me (indicating).

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Q About four and a half feet?

A Probably.

Q How heavy was that bag?

A I would judge approximately 25 pounds.

Q Did you testify in any court concerning the activities during this period?

A Yes, sir.

Q What could was that?

A In Toledo.

Q You picked it up and walked some 20 feet with it and then you put it down in that cage area?

A That is right.

Q Yet you are telling me you didn't hear any swishing at that time?

A No, sir, it was down around my knees.

Q Did you feel that the -- I believe in your words, that the bag was very compact?

A Well, it felt heavy for a suitcase that small.

Q Did that engender any suspicion in your mind on your first trip when you got it from the counter?

A No suspicion, no, sir.

Q So you left it there and went back about your business and some time later came back to put it up on a shelf, is that right?

1
2 A No, I went to get forms from the filing cabinet
3 and squatted down and the case was on the floor directly
4 in front of this lower drawer. There was a carton to my
5 left and I raised the case with both hands like this
6 (indicating). I was squatting and moved it over on the
7 carton and just wondered about the weight of it and went
8 like this (indicating), shook it to see if there was
9 ticking in it, actually.

10 Q You didn't do that the first time but the
11 second time?

12 A That's right.

13 Q You didn't wonder about a bomb being there
14 the first time?

15 A No.

16 Q How much time was it from the time you placed
17 the bag originally and came back to get it out of the way?

18 A Probably five minutes.

19 Q After you heard this swishing, is that because
20 the bag tilted?

21 A I tilted it. I shook it back and forth.
22 First I listened and shook it.

23 Q Let me ask you this question, sir: Did the
24 man tell you there was clothing in that bag when he
25 checked it?

A He didn't tell me anything.

Q Is there any special rule with the Penn Central Railroad that you can only check clothes?

A That is through on the train.

Q No, I'm not asking about through on a train. Is there any rule in the Penn Central Railroad, talking back in October 1971, that a person could only be allowed to check clothes overnight?

A There is an article, the last article we got, they could check clothing or whatever they had in there but could take out extra insurance and we had a notice up on the post, the valuable articles like jewelry and so on were not checkable or the company was not responsible for them.

Q I'm not asking was it responsible, I am asking was it against the Penn Central policy to check anything other than clothes?

A Well, that is the policy because the rules were set up by the ICC.

Q No, sir, was there anything to prevent the checking of a bag without disclosing the contents to the baggage clerk?

A We didn't ask what they had in the bag.

Q Did you have a right to ask?

A We did.

Q Did you ever ask this man what he was checking?

A No, I didn't.

Q You could have?

A I could have.

Q But you didn't do that?

A I didn't.

Q Now, after you took this bag and tilted this bag, how much time did you check it?

A Like I said I listened for a second and went like that (indicating) and set it down.

Q There was no ticking in there, was there?

A No.

Q You said it might be a bomb?

A That thought went through my mind.

Q Why?

A I don't know. I had been reading in the papers about people dropping bombs here around the post office and different buildings. This was going on at that time and it just went through my mind.

Q Were there any bombs being dropped over the City of Toledo, Ohio in October, 1971?

A Not that I know of.

Q What papers were you reading about the bombs?

A Well, on the television and in the papers.

Q So for one fleeting moment you believed in your terminology you were concerned about a bomb?

A Just that quick.

Q When you heard no ticking in there did that dissolve that?

A That's right.

Q What did you do next?

A The case just sat there.

Q The case was first deposited approximately 11:30 in the morning?

A That's right.

Q What time did you leave work that day?

A I left a little after 7:00.

Q Did you speak to Mr. Sibold that day?

A I think he came down from the ticket office with the bundle of company mail and I think I mentioned the fact to him as I was off the following two days, I had placed the bag in the knee-hole part of the desk in the case, underneath, so no one could see it from the outside.

Q Where did this conversation take place?

A In the baggage room.

Q What time was it, in the afternoon?

A In the afternoon, yes.

Q Did you take Mr. Siebold in and show him the case?

A No, I told him where it was.

Q Where did this take place?

A Right as he come in, he would have to come in the door and walk probably 10 feet and the mail room was in the office and around the corner and he walked in and I mentioned to him if you are working tomorrow and if anybody tries to pick up the suitcase it is under the desk in the knee-hole portion.

Q He couldn't see the bag from where he was?

A No, I just told him where it was.

Q No question about that in your mind?

A No, I don't think he knew.

Q The next you knew anything about this case would be the following Saturday, is that correct?

A That's right.

Q What happened when you came in on Saturday?

A Nothing out of the ordinary; the bag was still there.

Q Did you do anything with respect to that bag on Saturday?

A No, I didn't.

Q Did you have any conversation with respect to the

bag on Saturday?

A No.

Q Talk to Mr. Sibold about the bag on Saturday?

A No.

Q Was Mr. Sibold working on Saturday?

A Yes.

Q So you had no suspicion on Saturday, did you?

A No, I didn't say anything to anybody about it, no.

Q What about Sunday?

A Sunday the bag was still there.

Q Were you Mr. Sibold's superior?

A No. I was baggage agent and he was relief baggage agent.

Q You never worked together in the baggage?

A No.

Q Are you sure of that?

A No, we did not at that time.

Q No discussion on Saturday, no discussion on Sunday. Anything happen with respect to the bag on Monday?

A No, still there.

Q Did you discuss it with Mr. Sibold when he made his rounds?

A Tuesday afternoon.

1 Q On Monday?

2 A No.

3 Q Do you know Captain Blevins?

4 A Yes, sir.

5 Q Did you see him from the time that the bag was
6 delivered to you on Wednesday, at any time on Wednesday,
7 Saturday, Sunday and Monday?

8 A I think I saw him one or two days during the
9 week. He usually brought his company mail in there but
10 that was all.

11 Q Did you discuss the bag with him?

12 A No, I didn't.

13 Q What happened on Tuesday?

14 A Tuesday Mr. Sibold came down with some more
15 mail, the bag was still there and we talked about it a
16 minute and he said it is funny the party didn't pick it
17 up and that was all said.

18 Q Did you agree with him in that conclusion it
19 was funny the bag hadn't been picked up?

20 A I did because the man said he would leave it
21 for a day or two.

22 Q Did you know what the man's name was?

23 A No, I didn't.

24 THE COURT: I didn't hear the last answer.
25

RG 58

Julert-cross

THE WITNESS: No, I didn't know his name.

Q What is the next thing that happened with respect to the bag?

A Wednesday morning Mr. Sibold came by, the bag was still there and I mentioned to him the fact that because of the slight protection it was getting from being stolen we had better take it up with Captain Blevins of the Penn Central Police and either have somebody watch it or whatever he wanted to do with it.

Q That conversation took place on what day?

A Wednesday. We talked about it on Tuesday and a Wednesday.

Q Well, sir, my question to you is -- listen carefully -- when is the first time you had a discussion with Mr. Sibold after your original discussion with him concerning that particular parcel?

A On Tuesday.

Q Tell me what that discussion was and where it took place?

A We just talked and wondered why the party hadn't gotten the bag and we were a little worried about the fact that it wasn't protected the way it should have been.

Q Where did that conversation take place?

A In the baggage room.

Q Is that when Mr. Sibold was making his rounds with the mail?

A Yes, sir.

Q Was this in the afternoon?

A That was Wednesday afternoon.

Q No.

A Tuesday afternoon.

Q On Tuesday afternoon when you had this discussion did you take Mr. Sibold in and show him the bag?

A No, I didn't. I told him it was still in there.

Q Mr. Sibold never walked in and saw that bag on Tuesday?

A No.

Q In your presence, you are positive of that?

A As far as I know. I don't recall whether he walked back there or not. We talked and he had the run of the baggage room same as I did. I am not sure.

Q Is your answer that he didn't see the bag on Tuesday or you are not sure?

A I don't know. He could have come down after I left.

Q Only with you being there?

A I don't recall whether he looked at the bag or went there or not.

1 rg 60

Julert-cross

2 Q You would normally, since your desk or whatever
3 you call it is there, you would have seen Mr. Sibold if he
4 walked past into the baggage area?

5 A I would have.

6 Q You didn't see him?

7 A I don't recall seeing him.

8 Q The following day what happened?

9 A On the following day we discussed the bag again
10 and we brought up the subject of protection and we agreed
11 between us that Captain Blevins should be notified.

12 Q When you say we who brought up Captain
13 Blevins' name?

14 A I don't recall whether it was I or Mr. Sibold;
15 one of us did.

16 Q What did you say with respect to the bag?

17 A Just the fact that it didn't have the protection
18 it should have and it had been there that long, I was a
19 little worried about it.

20 Q Why didn't you have this in an enclosed cage area?

21 A No, people locked their houses --

22 Q Please answer my question, sir. Wasn't this an
23 enclosed cage area.

24 THE COURT: You ask why he didn't have protection
25 and he is trying to tell you and you'd better let him tell you.

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2 Why were you concerned about the lack of protection?

3 You may answer the question.

4 MR. MC ALEVY: That wasn't my question.

5 (Record read.)

6 THE COURT: You are right and you may go ahead
7 and put your question.

8 Q Will you answer that.

9 A The bag was locked in that cage, I had the key for
10 it and locked it when I left the baggage room, I locked it
11 with a padlock.

12 There were several men working as janitors,
13 they all had keys to both places and they came in there
14 nights to get supplies. We kept supplies in the baggage
15 room and it had been noticed on various occasions that
16 they had come in and got their supplies and walked out
17 without locking the door.

18 That is one of the reasons I was worried, because
19 I knew that if the wrong party came around the bag might
20 turn up missing.

21 Q Didn't you just testify that you gave the
22 janitors instructions concerning the bag, that it was in
23 there?

24 A I had told them about it.

25 Q So then you are telling me you were concerned

about the protection of the bag in this enclosed caged area on the one hand and --

A Yes, sir.

Q And you felt afraid the janitors were going to leave the door open on the other hand?

A It had been done.

Q When was the last time the janitors left the door open and a bag had been taken since you have been working, since 1927.

A I don't recall --

MR. FELD: I object to this, your Honor.
He is now badgering the witness and yelling at him.

MR. MC ALEVY: I am sorry for raising my voice.

MR. FELD: There is no jury here to impress.

MR. MC ALEVY: Judge, I am sorry for raising my voice but I think it was a pertinent question.

THE COURT: The objection was to the question.

MR. MC ALEVY: I apologize for raising my voice to the Court and to Mr. Feld and to you, sir.

Q When was the last time since you have been working there -- since 1927 I believe.

A Yes, sir.

Q That a bag was stolen or taken out of the baggage area by someone unknown?

1
2 A I can't give you any specific date but prior
3 to the time we locked the depot up at 7:00 or 7:30, we
4 had three tricks working and over a period approximately
5 about two or three bags were taken right out when somebody
6 was around.

7 Q Since the end of World War II -- do you recall
8 that, don't you?

9 A Yes.

10 Q Can we agree upon the fact that the railroad
11 business started down after the war?

12 A It did.

13 Q Tell me the last time you can recall a bag
14 being stolen out of your little baggage compartment in
15 Toledo train station since October of 1971?

16 A I can't give -- not since October, I wouldn't
17 say since October.

18 Q Before that?

19 A I can't give you a specific date or year. I would
20 say a year or two two men came and got bags stolen?

21 Q At night?

22 A No, in the daytime.

23 Q My question, sir, is at night after you locked up.

24 A We didn't lock up at that time.

25 Q When did you start locking up?

A Approximately 1967.

Q From 1967 when you started locking up tell me how many bags were taken out of the locked cage?

A None that I know of.

Q Therefore, you just told me that you were afraid, that you were concerned about the protection of the bag. Yet, since you started the practice of locking up at 7:00 or 8:00 at night since 1967, not one bag was ever missing.

THE COURT: Is that a question.

MR. MC ALEVY: Yes.

THE COURT: What is the question?

Q I want to know what is the answer.

THE COURT: He just told you what he just told you. Please ask another question.

Q If nothing had ever been stolen since this practice originated in 1967, why all of a sudden did you become worried about this bag?

A For the simple fact that from 1967 I don't recall ever having a bag parcel checked and left overnight. People would check it off a train and come in and want to run up and get something to eat and come back and get the case. We never left them there that long and that is the first time since 1967 we had a bag lying there all that

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2 time.

3 Q This is the first time?

4 A That's right.

5 Q Isn't it a fact that was the only bag in the
6 entire check area or cage area?

7 A In the cage area.

8 Q You said you had paper work you had to do when a
9 train came in. Did you have any spare time during the day?

10 A Yes, sir.

11 Q The fact is you had an awful lot of spare time.

12 A I had charge of the janitors, maintenance, charge
13 of cleaning up the depot.

14 Q When you came back to work on Saturday you went
15 and looked at that bag on Saturday?

16 A I went over to see if it was still there.

17 Q Did you pick it up that day?

18 A No.

19 Q Just looked at it?

20 A That's right.

21 Q Didn't say anything to anybody about it?

22 A No, sir.

23 Q Sunday when you came to work did you go back
24 to the little check area and look at it again?

25 A Yes, sir.

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Q Did you take it up and shake it that time?

A No.

Q Did you talk to anybody about it?

A No, sir.

Q On Monday, the third day when you came back from the weekend, meaning Thursday and Friday you had off, did you go and check it again?

A I saw it was still there.

Q That was the only bag there, wasn't it?

A Yes, sir.

Q You looked at it?

A Yes, sir.

Q Didn't pick it up that time?

A No.

Q Didn't talk to anybody about it that day?

A No.

Q Tuesday you first had a conversation with Mr. Sibold?

A That's right.

Q You went in that morning and saw it again?

A That's right.

Q Pick it up?

A No.

Q When Sibold came in you had a conversation on

Tuesday?

A Yes, sir.

Q Did you discuss Captain Blevins on Tuesday?

A We just mentioned the fact that this was a bad deal because there was no real protection for the bag at night.

Q Do you mean to say after you told Sibold about this hostile man that came in and went away real fast, you heard the swishing in that heavy bag, do you mean to say Sibold didn't go and have a look at that bag on that Tuesday?

MR. FELD: Objection as to form.

THE COURT: Sustained.

Q You are quite sure of that?

THE COURT: No, ask a question.

Q Let's go to Wednesday. Sibold came in with his mail in the morning on Wednesday, did he not?

A In the afternoon.

Q On Wednesday did you go and check the bag again?

A Yes, sir.

Q That is five straight days you looked at it?

A Yes.

Q Now, is this when Sibold went back and looked at it himself?

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1
2 A We went back in the cage, talked about it and
3 mentioned the fact that -- well, I did, I mentioned the
4 fact that I didn't like it being there at night alone
5 because it could disappear. There was nobody around at
6 night except the janitor on the third and fourth floor
7 and we agreed between us that we ought to notify the
8 Penn Central Police Department.

9 Q Did Mr. Sibold go over and pick up the bag at
10 that time?

11 A I think he moved it out from under the desk and
12 shifted it back again. He looked at the check to see how
13 much storage was on it.

14 Q He didn't pick it up and shake it though in your
15 presence, I take it?

16 A No, sir.

17 Q You tell me that you were concerned because you
18 didn't think you had adequate protection for that bag?

19 A That's right.

20 Q Any other reasons to cause you concern?

21 A No.

22 Q Are you sure of that?

23 A No, that's right. That was all I was thinking
24 about, protecting the bag, that was my job.

25 Q What is the next thing that happened? Did Captain

1 Blevins come that day?

2 A He didn't come on Wednesday while I was there.
3 I was off Thursday and Friday so I don't know anything
4 about that.
5

6 Q Since you and Mr. Sibold decided to call the
7 railroad police together, did you make the phone call
8 right -- you had a phone?

9 A Didn't talk to him at all about it. I didn't
10 talk to Captain Blevins at all about it.

11 Q You had some concern about the safety of this
12 bag. Why wasn't a phone call made at that time to the
13 railroad police?

14 A I think Mr. Sibold said he would talk to
15 Al Blevins if he saw him.

16 Q There was no emergency about this, was there?

17 A No.

18 Q In other words, Blevins was told he could come
19 down and look at it at his leisure, I guess, is that
20 correct?

21 MR. FELD: Objection.

22 A He usually stopped in there.

23 Q You tell me there was no great emergency to
24 get Blevins down there, was there?

25 A I wouldn't call it an emergency, just a

protective measure.

Q Were you at any time concerned for your safety with respect to the contents or what you thought might be in that bag?

A No, I wasn't.

Q What did you think was in the bag after you thought it wasn't a bomb?

A I didn't have an idea what was in the bag.

Q Just curious?

A Just curious.

Q Let me ask you this question, sir: Had you ever opened up a bag on any prior occasions?

A Yes, sir.

Q For what reasons?

A We had bags, lost checks, we had bags that were checked through on trains sitting down there for a long time and we found out later people had been in auto accidents or hospitals and we wondered why they didn't show up for the bag and tried to find an address or a letter, something with a number or street address on it.

Q Those long times, what do you mean a long time?

A Well, any bag held over 30 days was supposed to be sent to the lost and found department in Philadelphia.

Q That is 30 days?

1
2 A That is 30 days. In order to save people time
3 and inconvenience and money, we would wait until probably
4 28 days and take the chance that -- save them time and
5 like I said a lot of inconvenience.
6

7 Q But in this particular case you and Mr. Sibold
8 jointly decided to call the railroad police to open that
9 bag up only seven days after?

10 A I didn't make any --

11 MR. FELD: Objection, that wasn't the witness'
12 testimony that he intended to call Captain Blevins to open
13 the bag.

14 Q Why did you want Captain Blevins to come down?

15 A Well, we had officers in there on all three
16 tricks. Sometimes at night we never saw them around the
17 depot and my purpose was to have this officer stop around
18 there now and then to check and look around and see.

19 Q My question sir -- I am sorry if I am not
20 crystal clear -- what was your purpose and when I say
21 your purpose I mean Mr. Sibold and yourself, in having the
22 members of the railroad police come into your baggage area
23 on that Wednesday?

24 MR. FELD: Your Honor, I think this witness ought
25 to confine himself to what his purpose was, not speculate
on anybody else's purpose, unless somebody else said what

the purpose was.

MR. MC ALEVY: He said he and Mr. Sibold came to the conclusion jointly and I just want to know why they wanted the police there.

THE COURT: You can ask either what Sibold said was his purpose or what his own purpose was and Mr. Feld's objection is well taken. Do whichever you like.

Q Why did you want the railroad police to come to your baggage area?

A I think I have explained that. My purpose was protection.

Q What did you want the railroad police to do with respect to that bag?

A Wanted Mr. Blevins to see that an officer stopped around there during the night and checked the baggage room.

Q When you say checked the baggage room, what did you want the officer to do, just to check to see if the padlocks were still on?

A See if it was locked, the suitcase was there; if anybody was around that shouldn't be around.

Q Did you want the railroad police to open this bag?

A I had no idea. He mentioned it. I hadn't even given it thought myself.

Q Right. You just wanted the police to come in and

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check for the protection of the parcel itself?

A That is what I wanted.

Q You in no way or at no time wanted this bag opened?

A No. I myself hadn't even thought about it.

Q Were you curious about what was in the bag?

A The only thing it seemed heavy, at the beginning I was a little bit --

Q Wednesday after you looked at it the first time, carried it twice and five days in a row that you looked at it, the only time you were curious was the first day?

A I was curious of the weight because a lot of times people had things in bags that shouldn't be in bags like canned goods, for instance. I just wondered about it.

Q In other words you were still curious on the Wednesday that you were with Sibold and spoke?

A I was curious but I wasn't with respect to what you are referring to.

Q Did Sibold tell you when he tried to open the bag up?

A No, sir, I didn't know he tried to open the bag up.

Q You never knew that?

A No.

Q He never told you that?

A I never knew it.

Q Did you have keys for Samsonite Luggage in your little area?

A We had a box of keys lost and accumulated them over a period of years.

Q Your testimony is that Sibold never told you he had attempted to open that bag with Blevins?

A Mr. Sibold attempted it on -- I don't know that either.

Q With Blevins?

A Nobody told me, I wasn't there.

Q Anybody tell you subsequent to that time?

A Later when the police were there and opened it up, that is all I know.

Q Did anyone at any time ever tell you that Mr. Sibold attempted to open that bag by himself and his result was fruitless?

A No, sir.

Q Nobody ever told you that?

A No.

Q You are hearing that for the first time?

A Right.

MR. MC ALEVY: May I have one moment, your Honor?

(Pause.)

MR. MC ALEVY: That is all I have, sir.

BY MR. FEITALL:

Q Mr. Julert, when you talk about the cage, are you referring to the baggage area itself in which you work or some other cage in an enclosure?

A The cage was in the baggage room area. That had formerly been the cashier's cage and the cashier paid off there and so on and so forth.

After they closed the depot down and took a lot of trains off they did away with the position and just had the cage there.

Q The cage was behind you and inside the room in which you operate?

A Not behind me, on the side. We had a doorway, two desks and over here was the cage. All in one direct line.

Q So the cage was not accessible from the main part of the terminal?

A No, sir. It could be, there was a back door that wasn't always locked. Somebody could have gotten in.

Q A back door where?

A Back door to the -- it is hard to explain but this is a former baggage agent's office. Years ago we always had three tricks working and had a doorway.

Q To what?

A To the other baggage room.

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2 Q Did that doorway to the baggage room open up into
3 a common area or street or where?

4 A Opened up to the hall outside the baggage room and
5 the street and everything else.

6 Q There are a lot of doors in the terminal that
7 are always have locks on them, right?

8 A Yes, sir.

9 Q There are keys for the locks, right?

10 A I imagine there are.

11 Q Certain people have keys and certain people don't.

12 A That's right.

13 Q Of all the places in the terminal that the Penn
14 Central selected for you to do your work in was this room?

15 A That's right.

16 Q That is the place that they gave to you to take
17 valuable baggage?

18 A That's right.

19 Q Who was the supervisor of the terminal?

20 A I was the supervisor in my department. There
21 was a superintendent, an assistant superintendent, but they
22 weren't there at night.

23 They weren't there after 5 o'clock.

24 Q And the superintendent would come around from time to
25 time and check security in the terminal, wouldn't he?

1 A As far as I know. I don't know for sure.

2 Q Did you ever say to Milton "You know, this room is
3 not very secure, we ought to sit down and figure out a better
4 way to have a secure baggage room? Did you ever say that
5 to him?
6

7 MR. FELD: Objection as to relevance, your Honor.

8 THE COURT: I will allow it. Did he ever say that
9 to you?

10 A That same thing has been said over a period of
11 years because when the railroad began to go downhill they
12 cut jobs in the place. We had a baggage room on three floors
13 and the lower floor but they combined them and put us in a
14 bad spot but we couldn't do anything about it.

15 Q A bad spot?

16 A That's right.

17 Q You didn't like where you were?

18 A It wasn't the fact I didn't like it but the fact of
19 the protection and so on and we have to have everybody
20 down there.

21 Q You had more people there that worked in the
22 enclosed area?

23 A One, that was me.

24 Q You had a key to the place, right?

25 A That's right.

Q You knew others who had keys, didn't you?

A Yes, sir.

Q Because you helped make the keys for the doors?

A No, I didn't make the keys.

Q You keep track of the number of keys?

A No, because I didn't know when I took this job there were maybe four or five other people that had them.

Q How long are you there?

A 46 years.

Q In that room, in the cage?

A From about 1967.

Q Now, the cage in the room, does the cage have a lock to it?

A Yes, sir.

Q Who had a key to that?

A I had one.

Q Did you say you keep cleaning material and brooms and mops in there?

A No, sir.

Q Kept baggage in there?

A No, not necessarily.

Q What did you keep there?

A Racks. Before you got to the cage we had baggage racks.

Q Inside the cage, the locked cage?

A No.

Q What did you have in there?

A A desk, filing cabinets.

Q Any other desk ever stolen from there?

A Not that I know of.

Q That cage was itself locked up, right?

A Yes, sir.

Q Who had a key for that, you?

A I did.

Q Who else had a key for that?

A One in the drawer and one in the desk and I think some of the janitors have them, given to them by previous men that worked there.

Q You knew they had these keys?

A Yes, sir.

Q Did you ever ask them for the keys back?

A No. The reason I didn't do --

Q I didn't ask you that.

A Two of the men had lockers in there.

Q Lockers in there?

A Yes, sir.

Q So the employees could store their clothing inside the baggage area?

A That's right.

Q Did you complain to the superintendent of the railroad terminal that your people who were cleaning the place used to change their clothes in the cage area?

MR. FELD: I object to that question, the whole line of questions on the ground of relevance. I don't see what this has to do with the issues that have to be decided here and I think we ought to have an offer of proof from counsel as to what he intends to prove.

THE COURT: He is testing the credibility of the witness as to whether he was really concerned about security and we have to let him go on.

I hope he is going to use his judgment about how significant any of this effort is but go ahead, Mr. Feitell.

Q You never had any discussion with your superintendent about getting these people out of that cage area so it could really be devoted to baggage?

A The truth was known to the superintendent, probably knew they were in there.

Q The man came in with the bag, did you tell him that is the way the baggage terminal works?

A I didn't tell him that. I suggested that he put it in a locker.

Q Because you knew in the back of your mind the

conditions were not safe?

A That's right. That is what I thought.

Q But you told the man he might put it somewhere else?

A Yes.

Q There were parcel bins that he could rent?

A Yes.

Q What are these, key bins?

A That's right.

Q The man told you in words or substance he was satisfied to leave it where it was?

A Yes.

Q You told him it was safe up in the bins?

A That is right.

Q After you got through telling him that he wanted to leave it there and didn't you get the impression that he wasn't concerned about the safety of the bag?

A I suppose he wasn't. I can only assume.

Q Wouldn't you have assumed if he was concerned about the safety of the bag that there would have been something really valuable inside? Wouldn't you draw that conclusion?

A I suppose.

Q Now you had this heavy bag which you could conclude the fellow who checked it didn't think was valuable and you were concerned about what was so heavy

in it, correct?

A I wasn't concerned about it, I just noticed that there was overweight and I don't know.

Q How much did it weigh?

A I wasn't concerned about it.

MR. FELD: Objection to that as asked and answered already.

MR. FEITELL: I never heard the answer to that.

MR. FELD: Weren't you here when Mr. McAlevy asked the question and the witness answered it?

THE COURT: You may answer.

How much did the bag weigh?

A Approximately 25 pounds.

THE COURT: I think that you will find when you look at the record at a time when you were not listening that same answer was elicited by your friend, Mr. McAlevy. I don't like to waste time arguing about these things but I wish you would pay attention and not repeat the cross examination.

MR. FEITELL: I miss a thing here and there and I am really paying attention to the best of my ability.

Q Now, in all your years of handling baggage you have had experience with people ship through things in bags that didn't contain clothing?

1
2 A Yes, sir.

3 Q You say that in connection with your job you have
4 the right to ask people who do check in to disclose the
5 contents?
6

7 A The question always came up, if I can explain it
8 this way, if you check suitcase, a small suitcase and take
9 it for granted that you have maybe clothing shoes or something
10 like that.

11 If you brought a carton or bag or duffle bag or
12 something like that, we always questioned the passengers,
13 because like I say, a lot of people had canned goods,
14 fruit, hams, stuff like that that wasn't checkable --
15 typewriters.

16 Q The claim check, did that have anything as to the
17 liability of the railroad for loss of the parcel?

18 A That's right.

19 Q That is what you are concerned about?

20 A Yes.

21 Q What did the check say that you gave the man?

22 A \$20 liability.

23 Q Plainly written?

24 A Yes.

25 Q You gave it to the man?

A Right.

1
2 Q He had an opportunity to look at it, right?

3 A Yes.

4 Q He paid just 50 cents?

5 A That's right.

6 Q There are signs outside of the place that you
7 work which explain the limits of liability and the
8 conditions of checking baggage?

9 A That's right.

10 Q That man spoke English?

11 A Yes.

12 Q These are all written in English?

13 A Yes, sir.

14 Q Incidentally, what did the man look like?

15 MR. FELD: Objection, your Honor. Counsel is not
16 entitled to explore an issue not pertinent to this procedure.

17 THE COURT: What is the relevance of that,
18 Mr. Feitell?

19 MR. FEITELL: This man's recollection of events
20 hat occurred. What is more pertinent than all these things
21 about nervous and let us see what he looks like.

22 THE COURT: Objection sustained.

23 Q This was an unusual circumstance in your
24 experience of recent years when you were working there that
25 somebody would leave a bag and not have it checked through?

A No, that wasn't unusual. We had thousands of bags checked but business dropped off gradually and they moved the baggage room down to the lower floor and people would use the lockers upstairs.

Q Nothing unusual in a man who came in and checked a bag?

A No, except for the fact that this was the first one in possibly six months.

Q The man said he didn't want to check it in the parcel cabinet that had a key for it?

A That's right.

Q You construed that as a hostile answer?

A Not the answer, the way it was answered and he raised his voice and pointed.

Q When you say Mr. Sibold for the first time you told him about the bag, right?

MR. FELD: Objection, this again was asked and answered.

THE COURT: Sustained.

Q What else did you tell him on the first occasion when you saw him except that there was this bag in the knee-hole desk and he should be concerned about it.

MR. FELD: Objection.

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THE COURT: I will allow it. If you remember.

A We only talked about the bag being in the baggage room, that is all the first time.

Q Did you tell him this man was a hostile man?

A Just mentioned the fact to him that the man, I explained, told Mr. Sibold that I wanted the man to put it in the locker and I got a hostile answer and he wanted it right there. That was all.

Q When Mr. Blevins came and you told him the same thing --

A I didn't talk to Mr. Blevins.

Q You knew the limit of liability for the railroad was about \$25, right?

A Right.

Q But the railroad was in a very bad financial condition?

A Yes, sir.

Q So you were really worried the bag was stolen and the company would be stuck for \$25.

MR. FELD: Objection.

A I wasn't worried in that respect.

Q You wanted the man to have a bag when he came for it?

A That's right.

Q This man was hostile to you, you were very worried

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about the bag, that he should get the bag?

A I was down there for 46 years and it was part of my job.

Q You picked the bag up on the first day and shook it?

A Yes.

MR. FELD: Objection, asked and answered.

THE COURT: Sustained.

Q Before you shook it, how did you shake it, show me.

MR. FELD: Objection.

THE COURT: Sustained.

Q The thought that went through your mind was that there was a bomb in there, right?

MR. FELD: Objection.

THE COURT: Sustained.

Q Did you think to yourself if I shake it it might go off in my hand?

MR. FELD: Objection.

THE COURT: I will allow it.

Mr. Feltall, this man has been under cross examination now for close to an hour after 10 minutes of direct examination. The mere chronology is not particularly significant I realize. I have rarely heard a less useful cross examination and I wish you would kind of have in mind that we are not paid here by the hour.

Try to use your time fruitfully and if you don't have any fruitful use of your time, leave it for some other things.

MR. FEITELL: May I have the last question and answer?

(Record read.)

Q You picked it up and shook it for what reason?

A I was just curious because of the weight.

Q You picked it up and shook it and wasn't one of the reasons you feared it was a bomb?

A I didn't fear it was a bomb. I thought, the thought just went through my mind, I just wondered if it was one of these crackpots that was doing this stuff at the time this happened.

Q You decided to shake it, that is the way you would find that out?

A I listened to it and shook it.

MR. FEITELL: That is all.

BY MR. SLOTNICK:

Q Mr. Julert, though the bomb thought was very substantial by Wednesday you put this to the side, is that correct?

A Yes, sir.

Q That was sort of forgotten about. What is the size

of this baggage room, the caged area?

A It is about, I would say, 10 feet long and seven feet wide.

Q How many trains pass through there during the course of a week and stop there?

A At this time only two trains, one a day each way.

Q Where were they going to?

A One went from New York to Chicago and the other went from Chicago to New York.

Q Do you ever handle freight?

A We don't have anything to do with freight.

Q What do you basically handle in the usual course of events?

A Well, if there is any baggage that is my job. I had charge of the janitors, maintained the depot, ordering supplies and so on. Anything like that that came up they call us to do.

Q People would come in and check their belongings and get checks and get on trains or coming off trains and check baggage with you?

A As a rule, the baggage was checked through on a train, delivered.

Q If they got out they would check their baggage there?

1
2 Q You had a key to it?

3 A Yes.

4 MR. SLOTNICK: No further questions.

5 MR. FELD: No questions.

6 MR. PANZER: I have one problem with the witness.
7 I would like to make an application now. I intend to call
8 this witness if there is a trial of this case.

9 In order to save time I would just want to make
10 sure that this is part of the record.

11 MR. FELD: Your Honor, if this suppression
12 motion is denied Mr. Julert will testify for the government.

13 MR. PANZER: That will avoid the necessity of me
14 subpoenaing him. That is why I wanted to get it on the
15 record.

16 I would also ask the government to give me an
17 opportunity to speak to this witness before the commencement
18 of the trial.

19 MR. FELD: It is not up to me.

20 THE COURT: The government doesn't own him.
21 Speak to Mr. Feld and I am sure he will help you arrange
22 an appointment.

23 MR. FELD: If the witness wants to speak to him,
24 he may.

25 THE COURT: As a matter of fact, you are not

1 rg 90

Julert-cross

2 A Most put it in the lockers if they wanted to leave
3 it temporarily.

4 Q You mention the word parcels in your testimony.
5 What exactly is a parcel?

6 A It was at the beginning we had a lot of business,
7 it was called a parcel check room.

14/ 8 Q Will you relate back your answer to around
9 October 1972, did you have any parcels?

10 THE COURT: 1972?

11 MR. SLOTNICK: 1971, I am sorry.

12 Q Any parcels during that period of time?

13 A As I explained, this was about the first one
14 in approximately six months.

15 Q When you say parcel you include that realm of
16 things including that baggage, is that correct?

17 A That is right.

18 Q At the time during October 1971 did you have
19 anything else checked in that cage area?

20 A Not a thing in the cage area.

21 Q That is the only thing there?

22 A That's right.

23 Q It was locked during the period of time it was
24 checked?

25 A That is right.

1 rg 92

Julert-cross

2 very busy now and maybe Mr. Julert will speak to you now.

3 Are you planning to go back?

4 THE WITNESS: This evening.

5 THE COURT: Will you speak to Mr. Panzer at any
6 time in the meantime?

7 THE WITNESS: Yes.

8 THE COURT: All right.

9 MR. PANZER: Thank you.

10 (Witness excused.)

11 MR. FELD: The government calls Albert Blevins.

12
13 A L B E R T C. B L E V I N S , a witness called
14 on behalf of the government, being first duly
15 sworn, was examined and testified as follows:

16 DIRECT EXAMINATION

17 BY MR. FELD:

18 Q Mr. Blevins, what is your occupation?

19 A Captain of Police, Penn Central Transportation
20 Company.

21 Q Where are you located?

22 A Toledo, Ohio.

23 Q How long have you been employed in this position?

24 A I have been at Toledo three years.

25 Q Prior to that time were you employed by the

Penn Central Railroad elsewhere?

A Yes, sir.

Q Directing your attention to October 27, 1971, did you have a conversation with Mr. Charles Sibold?

A Yes, sir, I did.

Q Before we get to that, can you briefly describe what your duties as captain of police there?

A I was in charge of the nine officers assigned to the division, protection of property of the railroad, investigations connected with it.

Q Mr. Sibold is an employee of the Penn Central Railroad?

A Yes, sir.

Q What is his occupation?

A At that time he was a baggage foreman.

Q Where did the conversation occur on October 27?

A In my office at the terminal in Toledo.

Q Tell us what was said by you and by him at that time?

A Mr. Sibold came in about 1:30 in the afternoon. He said that he had in the baggage room under parcel check a suitcase and he was rather concerned about the suitcase being there and it had been checked under what he considered suspicious circumstances or unusual circumstances.

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2 He said that it was left approximately a week
3 ago on the 20th, that the man had insisted that the parcel
4 be left in parcel check even though the baggage man suggested
5 it would be more practical to leave it in the coin locker
6 on the mezzanine floor.

7 Mr. Sibold felt that in view of the fact the man
8 had said he would pick up the parcel within two days and he
9 had not picked it up, and he was concerned about the
10 contents, possible contents of the suitcase.

11 He said that he felt that it possibly could
12 contain explosives or something harmful to the building.

13 Q What did you do after this conversation?

14 A Mr. Sibold asked me if I would go down and look
15 at the parcel. I did go down.

16 Q Where did you go?

17 A From my office on the ground floor to the baggage
18 room also on the ground floor.

19 Q Did you observe the bag?

20 A Yes, sir.

21 Q What did it look like?

22 A To the best of my recollection it was a black
23 Samsonite suitcase approximately 24 inches by 15 inches
24 by nine inches. Was placed in the floor in the cage
25 section of the baggage room.

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3 Q Now, when you got down to the cage area where
4 this suitcase was located, what did you do in reference to
5 this suitcase?

6 A Went over to the suitcase and picked it up
7 and hefted it from end to end. At the time I heard what
8 sounded to me like a rustling, possible a plastic bag or
9 liner inside the suitcase and it didn't at that time appear
10 to be the normally packed suitcase. This was less than
11 tightly packed.

12 Q Did you notice anything about its weight?

13 A It appeared to be heavy for a suitcase of that
14 size.

15 Q After you left the suitcase did you say anything
16 to Mr. Sibold?

17 A At the time I agreed with him that with the
18 suspicious circumstances that he had stated, that he felt
19 he should examine the contents of it and if he wanted to
20 do that I would be in a position to act as a witness, which
21 was our policy at that time.

22 Q Did you ask him to open it?

23 A No, sir.

24 Q What did you then do?

25 A Mr. Sibold attempted to open the suitcase, unlock
the suitcase. We determined it was locked and he asked me if

1 rg 96

Bleving-direct

2 I could get any assistance in unlocking the suitcase so he
3 could examine it.

4 I questioned two or three employees in the area
5 as to whether they had Samsonite keys. One of the employees
6 had a Samsonite key to a briefcase and I took it back, gave
7 it to Mr. Sibold and he attempted to open the suitcase,
8 unlock the suitcase with it, but it would not fit.

9 Q You were there at that time?

10 A Yes.

11 Q After he attempted unsuccessfully to open the
12 suitcase, what happened?

13 A At that time it occurred to me that it could
14 possibly require a locksmith or someone familiar with
15 how to manipulate the locks to get this open without
16 damaging the suitcase.

17 Q Did you call a locksmith?

18 A No, I didn't.

19 Q Why didn't you call a locksmith?

20 A At the time and presently there is a financial
21 consideration with our operations and to go out and
22 contract or to have a locksmith come in, unless it is a
23 specific reason that you can justify, there is a problem
24 in this area.

25 Q Did you call anyone?

rg 97

Blevins-direct

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2 A Yes, sir, I called Detective George Ryan of the
3 Toledo Police Department.

4 Q Did you know Detective Ryan prior to that date?

5 A Yes, sir. I had met him shortly after coming to
6 Toledo, Ohio.

7 Q Did you have some kind of on-going relationship
8 with him?

9 A Yes, sir. Detective Ryan was my primary contact
10 with the Police Department in Toledo. I had been
11 transferred around quite a bit and found it was easier
12 perhaps to establish a relationship with one officer
13 and then if I had any problems or questions about it,
14 go through this officer and have him refer you to a given
15 area.

16 Q Would it be fair to say from time to time he
17 provided assistance to you?

18 A Yes, sir. And we also had a friendly
19 relationship also.

20 Q Social relationship?

21 A Yes, sir.

22 Q Approximately what time did you call Ryan on the
23 27th of October?

24 A About 2 p.m. on the 27th.

25 Q Where did you call him?

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A I called him at the Toledo Police Department, Safety Building.

Q Tell us what was said by you and him at that time?

A I inquired, to my recollection, of George if he knew of anyone who could open a Samsonite briefcase.

At that time George stated that he believed they had several old keys or lost keys down in the property department and that he would go down to the property room and inquire and see if they had a Samsonite key there that could possibly open the suitcase or unlock the suitcase.

Q Did he indicate that he would get back to you?

A Yes, sir, he did.

Q Did he get back to you on October 27?

A No, he didn't.

Q Did you do anything with regard to the suitcase on October 27 other than what you told us so far?

A Not that I can recall.

Q At the time you called Detective Ryan, did you have any idea as to what the suitcase contained?

A No, none whatsoever.

Q Directing your attention to Thursday, October 28, about 3:15 in the afternoon, where were you?

A I was at my office.

Q What happened at that time?

A About 3:15 Detective Ryan, Detective Beavers and Officer Badal from the Toledo Police Department came to my office.

Detective Ryan stated he could not get a key, they apparently didn't have any more keys in the property room. That he had brought Officer Badal and he was going to manipulate the locks and felt he could possibly unlock the suitcase.

Q What did you do after that conversation?

A We proceeded to the baggage room.

Q Who was there?

A Mr. Sibold.

Q Did you all go to the baggage room?

A Yes, we did.

Q What occurred in the baggage room?

A I introduced the officers to Mr. Sibold and Mr. Sibold explained the problem, showed them the briefcase and took it into the back room area of the baggage room, placed it up on a file cabinet.

Q After he placed it on a file cabinet what happened?

A Officer Badal proceeded to manipulate the locks on this suitcase.

rq 100

Bleving-direct

Q Would you describe for us what Officer Bedal did?

A To the best of my recollection he had a long bladed small screwdriver and some type of pick instrument and attempted to manipulate the lock on either side of the suitcase.

He was unable to do this and needed something smaller and I went down to my office and got two paper clips.

Q Did you give him the paper clips?

A Gave them to him.

Q What did he do with them?

A He was able, using the paper clip and the screwdriver, to manipulate the locks and unlock it.

Q After he unlocked the mechanism what did he do?

A He stepped back.

Q Then what happened?

A He indicated the suitcase was unlocked to Mr. Sibold, he went over and unlatched it and placed -- I am sorry, Mr. Sibold went over, took the suitcase, placed it on the floor and unlatched it and opened the suitcase.

Q Did anyone instruct Mr. Sibold to do that?

A I don't remember, sir.

Q Did you instruct him to do that?

A No.

Q Did you request him to do that?

A No, it was right there, Mr. Sibold was there and he was the man who wanted the suitcase open. He unlocked it. That finished our services to him other than as witnesses.

Q Did you observe the suitcase when it was opened, after it was opened by Mr. Sibold?

A Yes, sir.

Q Could you tell us what it contained, what you observed?

A It contained 11 hermetically sealed plastic bags containing a white powder and one package containing a granular type powder, also white and on the package was a piece of masking tape with the letter "C" on it that sealed I believe three food seal bags inside each other. That granular powder was sealed with a wire tape fastener.

Also I believe a dish towel and apparently a new dish towel and two or three unused paper towels.

MR. FELD: No further questions.

THE COURT: Let us take 10 minutes.

(Recess.)

CROSS EXAMINATION

BY MR. MC ALEVY:

Q Captain Blevins, when did you become affiliated with the Penn Central Railroad?

A About 10 3/4 years ago, sir.

1 rg 102

Bleving-cross

2 Q Back in October of 1971, your title was that of
3 Captain?

4 A Yes, sir.

5 Q You were in charge of the security at the Toledo
6 Train Station?

7 A Yes, sir.

8 Q You were the head man with the Penn Central
9 Police at that time?

10 A At Toledo, yes, sir.

11 Q When was the first time you heard about this
12 particular bag, what date?

13 A On October 27.

14 Q What day in the week was that, do you recall?

15 A A Wednesday, I believe.

16 Q Mr. Sibold was one that had a conversation with
17 you at your office?

18 A Yes.

19 Q Mr. Sibold said that he was suspicious of a certain
20 bag in the baggage area, is that correct?

21 A Yes, sir.

22 Q Did he tell you about lifting it and shaking it?

23 A Yes, sir.

24 Q He told you about the weight of the bag?

25 A I believe so.

rg 103

Bleving-cross

Q He told you about the person who came in and checked it?

A Yes, sir.

Q As a result of what he told you, you went down to the baggage area yourself, is that correct?

A Yes, sir.

Q What was the purpose of you going down there?

A Mr. Sibold stated that he wanted to examine the contents of the bag. It is our policy in that case to have a police officer present to protect both the baggage man and the company.

Q Captain, you are a peace officer of the State of Ohio, are you not?

A No, sir. The railroad police are commissioned by the State but are not considered police officers in the State of Ohio.

Q You underwent training, did you not, to rise to your position of captain?

A Yes, sir.

Q Are you familiar with the 4th Amendment of the Constitution?

MR. FELD: Objection, your Honor.

THE COURT: Why is this relevant?

MR. MC ALEVY: This man is a captain of police.

rg 104

Bleving-cross

THE COURT: What is the relevance.

MR. MC ALEVY: With respect to the search, Judge, and other roads he could have travelled on that day and I would like to pursue that.

THE COURT: Sustained.

Q When you got to the baggage area who was there?

A Just Mr. Sibold.

Q Where was the bag?

A It was inside the caged area in the baggage room.

Q Was that door locked?

A I don't believe so.

Q Did you bring somebody with you or did you come by yourself?

A We walked down together.

Q When you got down there is it your testimony that the baggage door was not locked, the cage?

A That's right.

Q That bag was inside the unlocked cage?

A Yes, sir.

Q No question about that?

A I don't believe so, sir.

Q What did you do with respect to the bag?

A I lifted it and tilted it end over end.

Q After you did that, what is the next thing you did?

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2 A Put the bag down.

3 Q After you put the bag down, what did you do?

4 A At that time Mr. Sibold asked me for some
5 assistance in unlocking the bag or how he could get
6 the bag unlocked.

7 I told him that I would ask and see if we could
8 come up with a Samsonite key to be used to unlock the bag.

9 Q Didn't you ask Mr. Sibold to open it?

10 A No, sir.

11 Q Do you recall testifying, sir, in the Court of
12 Common Pleas of Lucas County, Ohio, in a suppression
13 motion in the case of Ohio versus Morris, Middlebrook on
14 Monday, February 28, 1972?

15 A Yes, sir.

16 Q Do you recall being asked certain questions by
17 the prosecutor with respect to your activities on the day of
18 October 27?

19 A Yes, sir.

20 Q Do you recall being asked page 101 of said
21 transcript by the prosecutor on direct examination:

22 "Q All right, what did you do after you lifted
23 the bag?

24 "A I asked Charles Sibold if he could open it.
25 We couldn't open it."

1 rg 106

Bleving-cross

2 Do you recall that question and answer.

3 A Yes, sir.

4 Q Sir, why did you just testify that you never asked
5 Charles Sibold to open this bag?

6 MR. FELD: Objection.

7 THE COURT: Sustained.

8 Q Were you telling the truth then or now?

9 MR. FELD: Objection.

10 THE COURT: Sustained.

11 MR. MC ALEVY: May I have the grounds of that
12 objection? I know it was sustained.

13 THE COURT: It is not relevant to have the witness
14 make this judgment of credibility. I will make the
15 judgment. He was sworn to tell the truth and if there is
16 a contradiction you may argue it.

17 Ask the next question.

18 Q Did you attempt to open the bag that day?

19 A No, sir.

20 Q Did Mr. Sibold attempt to open the bag that day
21 in your presence?

22 A What day was that again, sir?

23 Q The 27th?

24 A Yes, sir.

25 Q Did you ask Mr. Sibold if he had any keys that he

1 rg 107

Bleving-cross

2 could open it with?

3 A I don't exactly recall whether I did ask him or not.

4 Q Do you recall going down the hall and asking
5 people whether or not -- two or three people in different
6 offices whether they had a key for a Samsonite case?

7 A Yes, sir.

8 Q You did that yourself?

9 A I asked them if they had a key.

10 Q What was your purpose in asking the people if
11 they had a key?

12 A Mr. Sibold said he wanted to open and examine
13 the bag. I told him I would assist by getting a key if I
14 could.

15 Q You saw nothing wrong with that?

16 A No, sir.

17 Q Were you curious as to what was inside that bag?

18 A I would say so at this point, yes, sir.

19 Q What was your impression after you shook it and
20 after your conversation with Mr. Sibold concerning that
21 bag?

22 A Possibly the makings of a bomb in there.

23 Q Nevertheless you had a suspicion and you took it
24 upon yourself to allow Mr. Sibold to open that bag or attempt
25 to open up that bag I should say on that date?

A Yes, sir.

Q Even though there might be a bomb, you were going to allow him to open it in your presence?

A I said I believed there was the makings for a bomb in there, not there was a bomb.

Q What led you to have this suspicion.

A Yes, I had been stationed in Cleveland, Ohio, a baggage man came over to my office there with a bag that he had in storage six months and had subsequently opened and in the bag he found the makings for pipe bombs.

Q Did Mr. Sibold tell you how long this bag had been in his baggage area?

A I believe he stated about a week.

Q About a week?

A Yes, sir.

Q Didn't Mr. Sibold tell you in that conversation you had in your office that the man had left this bag?

A Yes, I believe he did tell me.

Q One week prior to that?

A Yes, sir.

Q Did Mr. Sibold tell you also that on Saturday when he came back he picked up the bag and shook it in the baggage area that Saturday?

A I believe he did, sir.

rg 109

Bleving-cross

Q He didn't tell you the first time he shook it that that was the day that he went to speak to you, did he?

A I don't honestly recall. I believe he told me it was on Saturday he first noticed the bag or it came to his attention.

Q Did you ask why he didn't contact you on Saturday?

A No.

Q Did you feel there was an urgent need to open this bag right away?

A No, sir.

Q In any event, there was some attempt to open the bag in your presence during the afternoon of the 27th, was there not?

A Yes, sir.

Q That was by a key?

A Yes, sir.

Q That failed?

A Yes, sir.

Q What did you do then after the attempt to open the bag in your presence failed?

A I went back to my office and called Detective Ryan.

Q And you had the conversation that you testified to?

A Yes, sir.

Q On direct examination?

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A Yes, sir.

Q Now, what particular squad is Detective Ryan or was he assigned to back in October of 1971?

A He was assigned to the vice squad.

Q Do you know what the vice squad entails in Toledo, Ohio?

A Yes, sir.

Q Does that entail investigation of narcotics?

A Yes, sir.

Q So in October 1971 your friend Officer Ryan was a narcotics officer, was he not?

A Yes, sir, in part.

Q Why didn't you call a member of the bomb squad if there was any need to do it to your knowledge?

A To my knowledge there isn't, sir. I wouldn't, even if I had a question that I felt should be referred to the bomb squad, I think I would have gone through Detective Ryan to determine just who to talk to over there in the bomb squad.

Q There is an FBI officer in Toledo, is there not?

A Yes, sir.

Q Did you call the FBI?

A No, sir.

Q Can you tell me why not?

1 rg 111

Bleving-cross

2 A Well, I couldn't see any reason to call the FBI.

3 Q Well, you are captain of the police now?

4 A Yes.

5 Q You had suspicions?

6 A Yes, sir.

7 Q There might be a bomb in this luggage?

8 MR. FELD: I object to it. We already had it
9 several times that the witness said he thought was the
10 makings of a bomb rather than a bomb inside.

11 THE COURT: He is only asking him. Did you have
12 suspicion there was a bomb there.

13 THE WITNESS: The makings of a bomb, your Honor.

14 Q But you didn't call the Federal Bureau of
15 Investigation?

16 A I don't know if they have jurisdiction over
17 that, sir.

18 Q You don't know they had jurisdiction over parcels
19 and interstate shipment?

20 A This wasn't an interstate shipment.

21 Q Didn't Mr. Sibold tell you where the bag came
22 from?

23 A A man apparently checked it at Toledo, sir.

24 Q Did he tell you what time the man came into the
25

1 rg 112

Bleving-cross

2 station?

3 A I couldn't honestly say whether he did or not.

4 Q He didn't tell you that the man came in the same
5 time as the train going to Chicago?

6 A I can't recall whether he did or not, sir.

7 Q How many trains a day went through the Toledo
8 Train Station back in October 1971?

9 A I believe there were two.

10 Q You knew when both came through, did you not?

11 A Approximately, yes.

12 Q Did you associate the time with the train in your
13 own mind?

14 A I don't recall right at this point in time whether
15 Mr. Sibold told me the exact time the man did come in or
16 if he specified that the man came off the train.

17 In any case, if the parcel was checked this is
18 not in interstate shipment, sir.

19 Q The next day what did you do with respect to this
20 suitcase, I mean, Thursday the 28th.

21 A Thursday?

22 Q Yes.

23 A When Detective Ryan and Beavers and Bedal arrived
24 we went down to the baggage room.

25 Q When these officers arrived did you tell them

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2 what you wanted done?

3 A When they arrived I expected Detective Ryan to
4 have possibly some keys which he could have Mr. Sibold try
5 in the lock. He told me at that time that he didn't have any
6 keys, Officer Bedal could possibly manipulate the lock for
7 Mr. Sibold.

8 Q Captain, why was it so important that Mr. Sibold
9 had to be the one to actually open up the suitcase?

10 A Because he has the authority to do that, the baggage
11 man has authority to do it, I don't and certain the
12 Toledo Police Department didn't.

13 Q Tell us exactly what the police officer did, not
14 Ryan but the police officer that picked the lock?

15 A He manipulated the lock with a screwdriver and I
16 believe one paper clip.

17 Q How long did it take him to do it?

18 A I can't really recall, sir, with any accuracy.

19 Q Would you say approximately a half hour?

20 A I would say 15 minutes to a half hour.

21 Q Where was this done?

22 A In an enclosed area of the rear of the baggage room.

23 Q You took it away from the -- is that where the
24 bag was when you first saw it?

25 A No, it is a room adjacent to that area.

1 rg 114

Bleving-cross

2 Q You took it out of the caged area and brought it
3 in the back room?

4 A Yes, sir.

5 Q You were there with three members of the Toledo
6 Police Department, were you not?

7 A Yes, sir.

8 Q And Sibold?

9 A Yes, sir.

10 Q You five people were there?

11 A Yes, sir.

12 Q What was the reason for taking this bag to this
13 back room?

14 A The purpose was, of course, it was away from the
15 public area of the baggage room. If there should be any
16 problem with it it wouldn't be out exposed to people coming
17 in and out of the baggage room.

18 Q What do you mean by problem, sir?

19 A If there had been any interruption by people
20 coming to the public area of the baggage room while Mr. Sibold
21 was examining what was in the suitcase.

22 Q Well, this was up to Mr. Sibold to actually open
23 this suitcase up, was it not?

24 A Yes, sir.

25 Q You and three police officers were just assisting

1 rg 115

Bleving-cross

2 him in doing that?

3 A Yes, sir.

4 Q Isn't that a fact?

5 A Yes, sir.

6 Q After this officer worked on this bag in the
7 baggage room for approximately 20 minutes or whatever it was,
8 did there come a time where the locks became unlocked?

9 A Yes, sir.

10 Q How do you know it became unlocked?

11 A I believe that that particular type of suitcase
12 has a consealed tab on it. When the lock is opened there
13 is a clicking sound and this tab comes up.

14 Q Did the officer let you other four gentlemen
15 know that the bag was now unlocked or words to that effect?

16 A I believe he had to work separately on each end
17 of the bag. I think he let us know when one end was
18 unlocked and when the other end was unlocked he stepped
19 back.

20 Q Then what happened after the officer stepped
21 back?

22 A Mr. Sibold put the bag on the floor.

23 Q Why couldn't the officer just open it, since
24 Mr. Sibold was right there, what difference would it make?
25 You people are all in the back room.

MR. FELD: Objection to the form of the question.

THE COURT: I will allow it.

A Will you state the question again, sir?
I am sorry.

Q All right, I will reframe it.

What difference did it make since all of you gentlemen are now removed in some isolated back room, what difference did it make whether the officer who picked the lock actually opened the case or that Mr. Sibold was called over to actually open it up.

A I believe Mr. Sibold was called over -- we were in rather close proximity to the case. The point was that Mr. Sibold was the man who wanted the case opened and I had no authority to open the case as did the Toledo Police Officers. I was there as a witness to protect Mr. Sibold from the allegation of wrong-doing and protect the company.

Q The three police officers from the Narcotics Squad just happened to be there to assist Mr. Sibold in opening this bag, isn't that right?

A One officer actually assisted him. He was brought over by the other two officers at my request, as a favor to me, personal favor to me.

Q What was the purpose of -- by the way, all these police officers were on duty at the time?

1 rg 117

Bleving-gross

2 A I believe two of them, I am not sure about
3 Detective Beavers. I believe he was also.

4 Q You believe he was?

5 A But I am not positive.

6 Q Now, you have three members of the Toledo Police
7 Department and a captain of police of the railroad assisting
8 Mr. Sibold in opening this bag because Mr. Sibold wanted to
9 know what was inside of it.

10 A We were assisting in unlocking, not in opening it.
11 That was the extent of our reason to be there with the
12 exception of myself, who was there as a witness for
13 Charles Siebold's protection.

14 Q Please tell me why there were three police
15 officers there?

16 A To the best of my knowledge, sir, Mr. Ryan was
17 coming over along with some keys. When he arrived he had
18 Detective Beavers and Officer Badal with him. Officer
19 Badal was there to manipulate the locks if he could in lieu
20 of having a key.

21 I can't honestly say I know why Officer Beavers
22 was there, Detective Beavers. I believe he just happened to
23 be in the area and took a ride over with them.

24 Q You state there were the four of you there for
25 20 minutes, the period it took to open up the locks?

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2 A Yes, sir.

3 Q You were interested in what was inside there as
4 captain of the railroad police, were you?

5 A Yes, sir, I was.

6 Q What was your interest?

7 A In the protection of the company employee opening
8 the bag.

9 Q Then would you mind telling me why before the bag
10 was opened you instructed Mr. Sibold that in the event the
11 man came to call for the bag he was to attempt to get his
12 license plate number on his car?

13 A It seems to me that is just common sense. You had
14 a bag of which you were suspicious and a man came with a
15 legitimate claim check to take it, prior to Mr. Sibold
16 being able to examine it, it would be just good common
17 sense to know the license number if he could.

18 Q Why? If the man came to take it, you never would
19 have known what was in it, would you?

20 A That is correct.

21 Q What would be the purpose of taking the man's
22 license plate number, Captain?

23 A In the course of 12 years of police work I have
24 written down a multitude of license plate numbers and 99 1/2
25 per cent never came to anything. But occasionally there is a

1 rg 119

Bleving-cross

2 time that it just might be helpful to have that number.

3 Q What would you have done with the license plate had
4 the man come in, sir?

5 MR. FELD: Objection, calls for a conclusion.

6 THE COURT: Sustained.

7 Q On Wednesday, did you give any other instructions --
8 on Thursday -- prior to the bag being opened and officer
9 Ryan and the other officers coming, did you give Sibold any
10 other instructions concerning that bag?

11 A Not that I can recall.

12 Q You were not concerned outside of your suspicions--
13 of company policy -- that you didn't want Mr. Sibold to get
14 in trouble, you had no other concern about the contents of
15 that bag?

16 A I was curious as to what was in the bag if the
17 makings of a bomb weren't in it.

18 Q You said that the officer couldn't open the bag
19 with the implement that he brought, is that a fact?

20 A Yes, sir.

21 Q You said that you aided him in some fashion by giving
22 him some implement?

23 A I went to my office and got two paper clips which
24 I gave to Officer Bedal.

25 Q You are quite sure of that?

rg 120

Bleving-cross

1
2 A Yes, sir.

3 Q You did that?

4 A Yes, sir.

5 Q Sibold didn't do that?

6 A To the best of my recollection, I went down to my
7 office and got two paper clips.

8 Q Did you tell Officer Ryan or any of them what you
9 suspected of being in the bag prior to them coming over?

10 A I can't put it exactly in words but I am sure, yes,
11 we discussed at one time or another with Officer Ryan,
12 I discussed it.

13 Q Didn't you testify that the reason you had the
14 police come over is because you didn't want to spend the money
15 for a locksmith?

16 A Yes, sir.

17 Q Didn't you say it was your real reason for calling
18 the policemen in, to save the Penn Central the money for
19 a locksmith?

20 A Yes, sir, that is part of the consideration.

21 Q Was it your primary reason?

22 A My primary reasons for calling Mr. Ryan was to
23 ascertain someone who could open the bag. If he told me to
24 get a locksmith, I am sure that I would have done so.

25 Q Did Officer Ryan or other officers pick up the bag

18/ 1 rg 121

Bleving-cross

1414

2 and shake it?

3 A I don't recall whether they did or not.

4 Q Did you speak to any of the police officers
5 except Ryan?

6 A There that day?

7 Q At any time concerning the bag?

8 A I am sorry, would you restate the question?

9 Q Did you speak to any other police officer outside
10 of your friend Officer Ryan concerning the bag and its
11 contents?

12 A Prior to his arriving there, no.

13 Q Let me see if I am following you correctly.
14 You spoke to him on Wednesday afternoon on the phone?

15 A Yes, sir.

16 Q Then you again spoke to him on the phone on
17 Thursday and he came over, is that correct?

18 A I really am not clear whether I called him again
19 on Thursday. I think possibly I did but I couldn't say for
20 sure.

21 Q But when he came over in the afternoon on
22 Thursday the bag was taken out of the cage area and
23 brought to the backroom, isn't that right?

24 A Yes, sir.

25 Q Was n't there a conversation between you and Ryan or

1 rg 122

Bleving-cross

2 one of the other officers concerning holding the bag?

3 A I can't recall any particular conversation.
4 I am sure there was some conversation about the contents
5 or opening the bag, but not other than just casual
6 conversation about it.

7 Q Did you tell Ryan or say I have what Sibold
8 told you?

9 A I can't positively recall but I probably did, yes.

10 Q Did you speak to the other baggage claim man
11 concerning this bag?

12 A No, sir.

13 Q Only Sibold you talked to?

14 A Yes, sir.

15 Q You related to the best of your recollection what
16 Sibold told you, to these officers?

17 A Yes, sir.

18 Q Then you also helped the officer open the bag?

19 A No, sir.

20 Q Didn't you just testify you gave them paper clips
21 to help them open it?

22 A He unlatched the bag, yes, sir.

23 Q After the bag was unlocked, not opened, but just
24 unlocked, Sibold was removed from the bag at that time,
25 was he not?

A I think Mr. Sibold was in about the same proximity of the bag as all of us during the entire operation.

Q But your testimony is that the officer that opened, unlocked it, stepped back from the bag?

A Yes, sir.

Q Who directed Mr. Sibold to open it at that time?

A I don't recall that anyone did. I think the officer, possibly Officer Bedal indicated to him that this was unlocked, Mr. Sibold went and picked it up to the best of my recollection, put it down on the floor at that time.

No one told him to open the bag.

Q After the officer opened it, he stepped back and no one gave anyone instructions?

A Excuse me?

Q No one gave anyone else any instructions that day?

A Not to my recollection.

MR. MC ALEVY: No further questions.

BY MR. FEITELL:

Q You were a commissioned railroad police officer?

A Yes.

Q Under the laws of the State of Ohio?

A Yes, sir.

Q You are commissioned under the revised code of

1 rg 124

Bleving-cross

2 State Statutes of Ohio, is that so?

3 A Yes, sir.

4 Q That statute sets forth all of your powers and
5 duties?

6 A Yes, sir.

7 Q Now, as a state commissioned railroad policeman
8 you have a right to arrest people?

9 A Yes, sir.

10 Q You have a right to investigate crimes on
11 railroad property?

12 A Yes, sir.

13 Q This bag is or is on railroad property owned by
14 the Penn Central?

15 A Yes, sir.

16 Q Now, this Mr. Ryan, you say that you called him
17 from time to time in connection with your duties as a
18 railroad police officer, didn't you say that on direct
19 examination?

20 A Yes, sir.

21 Q He was the person you knew in the police
22 department when problems came up to talk to?

23 A Right.

24 Q You told us there was a Mr. Beavers who came that
25 day?

A Yes, sir.

Q On the 28th?

A Yes, sir.

Q What was Mr. Beavers' assignment?

A I believe at that time he was assigned to the Vice Squad also with Mr. Ryan.

Q Also a member of the Metropolitan Drug Unit?

A He is now a member.

Q Wasn't he on October 28, 1971 a Toledo Police Officer, a member of the Metropolitan Drug Unit of Toledo?

A I believe so. I believe they both were performing half time both locations, sir, at that time.

Q You are telling us also are you not that probably Beavers was off duty, right?

A I'm not positive on that, whether he was or not. I believe he just happened to come over.

Q But you don't know for sure how he came over, right?

A No, sir.

Q He could have been off duty and some way he got there that time on the 28th, right?

A I know he came with Detective Ryan.

MR. FEITELL: That is all I have.

1 rg 126

Blevins-cross

2 BY MR. SLOTNICK:

3 Q Captain Blevins, you have a badge?

4 A Yes, sir.

5 Q Do you know what it says on it?

6 A Yes, sir.

7 Q It says State of Ohio anyplace on it?

8 A Yes, sir.

9 Q When did you get that badge?

10 MR. FELD: Objection.

11 THE COURT: On what grounds?

12 MR. FELD: It is not relevant.

13 THE COURT: I will allow it.

14 A It was in September of -- wait a minute,
15 December of 1968 I think when I went to Cleveland, Ohio.

16 Q What did you do in Cleveland, Ohio?

17 A Assigned as Captain of Police there.

18 Q You were a Police Captain in Cleveland, Ohio?

19 A With the railroad, yes, sir.

20 Q Eventually you were transferred to Toledo, is
21 that correct?

22 A Yes, sir.

23 Q You say you have a badge from Ohio State, is
24 that correct?

25 A Seal of the State of Ohio.

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Q And your car has that too, is that correct?

A No, sir.

Q Do you have an automobile at all?

A I am sorry, I thought you said card.

Q A car, automobile?

A All our cars are unmarked.

Q When you went to look at this bag and open it
were you acquiescing to a desire of Mr. Sibold?

A Yes, sir.

Q As a matter of fact, until Mr. Sibold called you
into the picture you had no knowledge of the baggage at all?

A That's right.

Q You went there because he asked you to?

A Yes, sir.

Q You called the police, is that correct?

A I called Detective Ryan.

Q After a series of events you called the police?

A Yes.

Q You asked them to bring a man over who could
open the bag?

A No, sir.

Q What was the purpose of Detective Bedal being
there, if you know?

A Mr. Ryan --

1. rg 128

Blavins-cross

2 MR. FELD: Objection. Asked and answered.

3 MR. SLOTNICK: I will establish it another way
4 if I may.

5 Q Did you tell Detective Ryan that the bag you
6 desired to open was locked?

7 A I told Detective Ryan that Mr. Sibold had
8 a locked bag that he wanted unlocked.

9 Q He wanted unlocked?

10 A He wanted to examine the bag.

11 Q You told him it was locked and you asked him to
12 bring one officer who could help you or -- withdrawn.
13 Who would unlock that bag?

14 A No, sir.

15 Q What did you tell him?

16 A When I first contacted him I asked him if he
17 knew anyone who could unlock a Samsonite bag.

18 Q What did he say?

19 A He said that he believed there was several
20 keys down in the property room of the Police Department,
21 they may have a Samsonite key; that he would check it out.

22 Q Did he call you back?

23 A No, sir.

24 Q He came right over?

25 A No, sir.

rg 129

Blevins-cross

Q What happened?

A I called to him on Wednesday I believe but I can't positively say for sure. When he hadn't come by Thursday I called him and he said as I recall possibly he would be over in the afternoon.

When he came over in the afternoon I expected him to be there with a handful of keys.

Q Your first conversation was not on Thursday that the bag was opened, is that correct?

A That is right.

Q When was your first conversation with him?

A Regarding --

Q Regarding that bag?

A On Wednesday.

Q Then he eventually appeared on Thursday?

A That is right.

Q What time on Thursday?

A About 3:15 p.m.

Q During that -- prior to 3:15 on Thursday, do you know if you or anyone else attempted to open that piece of luggage?

A No, sir.

Q You were waiting for Detective Ryan to come and appear, is that correct?

rg 130

Blevins-cross

1
2 A Yes, sir.

3 Q Then he appeared?

4 A Yes, sir.

5 Q The next thing that happened was Bedal pryed
6 it open with the keys he had, is that correct?

7 A I don't recall that he had a key. He had a
8 screwdriver and a pick.

9 Q Any keys involved in it? Did the police have any
10 keys when they tried to open the bag?

11 A I don't believe so. Not that I can recall.

12 Q Detective Bedal immediately sat down with the
13 screwdriver and whatever else he had and eventually other
14 materials were brought in, click, click, a spring type
15 apparatus sprung open and the bag though yet closed was
16 unlocked?

17 A It was unlocked, yes, sir.

18 MR. SLOTNICK: Do you have the bag with you?

19 MR. FELD: No.

20 Q When Detective Bedal was working on opening up
21 this piece of luggage, was it standing up straight or flat?

22 A It was flat.

23 Q Was it on a couch or a table?

24 A On a filing cabinet.

25 Q A four-level filing cabinet?

1
2 A Yes, sir.

3 Q He was working on it?

4 A Yes, sir.

5 Q What happened at the point it was unlocked?

6 A When he unlocked one side and he unlocked the
7 other, he stepped back.

8 Q When he unlocked one side did something happen?

9 A To the best of my recollection a small latch --

10 Q Springs open?

11 A No, it is enclosed underneath the latch apparatus
12 itself and that pops I think when the bag is locked and this
13 is concealed and there is a latch concealed and when you
14 open the bag this latch protrudes.

15 Q To the best of your recollection what happened at
16 the moment that he unlocked the right-hand side of the bag and
17 the left-hand side of the bag if you remember?

18 A I don't recall which side was unlocked first.

19 Q What happened when the first side of the bag was
20 unlocked?

21 A I don't recall anything of note happening. Someone
22 probably made a comment he got this side unlocked.

23 Q Now, how do you know he got this side unlocked?

24 A You could hear it snap.

25 Q You heard a sound?

1
2 A Yes, sir.

3 Q Nothing happened to the exterior of the bag, is
4 that correct?

5 A That is right.

6 Q And then he went to the other side?

7 A Yes, sir.

8 Q Now, while he was manipulating the first side
9 were you watching what he was doing?

10 A Yes, sir.

11 Q Was everybody else watching what he was doing?

12 A I assume so.

13 Q Did he then turn to Mr. Sibold and say you
14 manipulate the rest or did he go over to the other side and
15 finish manipulating the bag?

16 A He went over to the other side.

17 Q He finished manipulating the bag?

18 A Yes, sir.

19 Q Then what happened?

20 A Then Mr. Sibold put the bag on the floor.

21 Q What happened after that?

22 A There was another click, a corresponding click.

23 Q Then what happened?

24 A Then Mr. Sibold took the bag and put it on the
25 floor.

rg 133

Blevins-cross, redirect

Q Off the filing cabinet?

A Yes.

Q Put it on the floor on its side or --

A No, flat.

Q Standing up -- flat?

A Yes.

Q Then what did he do?

A He opened it.

Q You saw whatever you saw?

A Yes, sir.

Q During this period of time there were without question three members of the Toledo Police Department?

A Yes, sir.

MR. SLOTNICK: Thank you.

THE COURT: Anything else?

MR. FELD: I have one question.

REDIRECT EXAMINATION

BY MR. FELD:

Q Captain Blevins, prior to October 28, 1971 to your knowledge had suitcases ever been opened in the terminal which contained narcotics?

A Not to my knowledge.

MR. SLOTNICK: I object to that.

MR. MC ALEVY: I object to it. That is beyond the

1 rg 134

Blevins-redirect, recross

2 scope of the cross.

3 THE COURT: I will allow it.

4 MR. FELD: No further questions.

5 THE COURT: What was the answer?

6 THE WITNESS: Not to my knowledge, sir.

7 RECROSS EXAMINATION

8 BY MR. SLOTNICK:

9 Q Are you familiar with the fact that within two
10 months prior to that bag being opened there was a
11 proposition in Toledo whereby one of the detectives present
12 at the opening of that bag was mentioned in the newspaper
13 because he opened up a bag at the airport? Are you
14 familiar with that at all?

15 A No, sir.

16 MR. FELD: Objection.

17 THE COURT: I will allow it. Anything else?

18 All right, Captain, thank you.

19 (Witness excused.)

20 THE COURT: I think we are going to suspend for
21 the day. Do you plan to continue the Toledo business
22 tomorrow?

23 MR. FELD: Yes, your Honor. We have two more
24 witnesses.

25 THE COURT: All right. We will start at 10:30

tomorrow. I don't know what the government plans but I want somewhere in the record of this hearing the following question or questions of fact to be answered:

I would like to know on the record of this hearing when if ever anybody appeared with that claim check to claim the bag. That may sound like a stupid question because all of you know more about the case than I do but I want the answer in the record of this hearing. If you all know and can stipulate that is fine. If you don't, I would like to know and if nobody appeared I would like to know the subsequent history of that claim check.

I assume somewhere somebody knows where it is.

MR. FELD: Yes, your Honor.

THE COURT: Now, let me ask because possibly there are a couple of subjects on which you share knowledge that I don't have or is it a mystery?

MR. FELD: I think we all share the knowledge, your Honor.

THE COURT: Will you assert the facts and see if defense counsel agree with you?

MR. FELD: Several days after October 28 Alan Morris, Willie Middlebrook and Harry McSpaden arrived at the terminal. Middlebrook had with him the claim check, the other half of the claim check that Mr. Julert testified

1 rg 136

2 about. He picked up the suitcase.

3 THE COURT: Who had it?

4 MR. FELD: Willie Middlebrook, a co-conspirator
5 in this indictment.

6 THE COURT: Do you know when that was?

7 MR. FELD: I don't have the exact date.

8 MR. MC ALEVY: I think the 31st, your Honor.

9 THE COURT: October 31.

10 MR. FELD: Yes.

11 THE COURT: Is that as far as it goes -- that may
12 be as far as my question goes on the agreed statement of
13 facts?

14 MR. MC ALEVY: Judge, I would be willing to
15 stipulate on the morning of October 31 it was picked up
16 by those three gentlemen named by Mr. Feld.

17 THE COURT: Middlebrook had the ticket. Who
18 else was present?

19 MR. FELD: Present were Alan Morris and Harold
20 McSpaden.

21 If I may explain, your Honor, so there is no
22 confusion about it, Middlebrook as the testimony from the
23 Toledo trial shows, went to the baggage area, handed the
24 check and received the suitcase. He went upstairs with the
25 suitcase and upstairs he met Alan Morris. As they were going

into a coffee shop in the terminal they were arrested.

The police officers also arrested McSpaden who came with them at that time and was sitting in a Cadillac sleeping.

MR. LEVENSON: Your Honor, Mr. Stone isn't here and he represents Mr. Morris and I will cover for him briefly on his behalf and we are going to deny that.

THE COURT: I know. Only talking about for the purposes of this hearing.

MR. LEVENSON: I understand, your Honor.

THE COURT: Your man is not a party to this hearing so none of this can be used against him in any event.

I don't want this to go on forever. The question for all I know may not be material and can be resolved by stipulation and I don't want people coming in from Toledo to resolve it. I gather you are in agreement on this basically.

MR. FEITELL: I am ready to stipulate it was October 31, about 8:00 a.m. and beyond that what I was looking for I don't have anything in front of me.

THE COURT: You are willing to stipulate that Middlebrook arrived October 31 about 8:00 a.m. with the claim check and presented it and picked up the suitcase?

MR. FEITELL: Yes, your Honor.

MR. SLOTNICK: Yes, sir.

THE COURT: The rest I think is not within the scope of the question I asked, Mr. Feld, so I will cross it out of my notes and then if you feel you need to prove it in this hearing, you go ahead, but I didn't ask that.

MR. FELD: I think the question has been raised as to who was present at the time the actual claim ticket was given over and I just added that information as it did not seem all --

THE COURT: All right, Middlebrook came with the claim check, presented it and got the bag. Everything else -- this is for the purposes of this hearing, those are the facts responsive to my question.

MR. FELD: Yes.

THE COURT: All right, 10:30 a.m.

MR. FEITELL: Could I ascertain what other witnesses so that we could tell your Honor if we want--

MR. FELD: Mr. Ryan and Sibold.

THE COURT: All right.

MR. FEITELL: The gentleman who opened the bag, the officer that opened the bag that is the crucial witness.

MR. FELD: No officer opened the bag.

MR. MC ALEVY: Unlocked the bag.

THE COURT: If you think he is crucial enough so that your motion to suppress would be granted in his absence fine. If you thought he was crucial enough so you need him you must exercise the right of subpoena given to all of you. You have had noticed both that I was going to hold a evidentiary hearing for this subject and I would accomodate witnesses who had to come from far places. 10:30 tomorrow morning.

(Adjournment taken to September 26, 1973 at 10:30 a.m.)

AR 1

vs

73 Cr. 460

John Capra, et al.

New York, New York,
September 26, 1973; 10:30 a.m.
Room 128.

(Hearing resumed.)

THE COURT: Let us proceed. Gentlemen on the assumption that we will not have finished these pre-trial hearing matters today, I trust that we will finish them on an adjourned date, which will be October 2nd at ten a.m. and I think we ought to plan a long day on October 2nd and see if we can't get through with whatever is still left of these pre-trial matters.

MR. FELD: Mr. Sibold.

C H A R L E S W. S. I B O L D, called as a witness on behalf of the government, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION BY MR. FELD:

Q Mr. Sibold, what is your occupation?

A Baggage Agent, clerk, ticket agent.

Q By whom are you employed?

A Penn Central Railroad.

Q How long have you been employed by the Penn Central Railroad?

A I hored out on June 5, 1928.

2 O Do you know a Milton Julert?

3 A I do.

4 OA Is he employed by the Penn Central or was he em-
5 ployed by the Penn Central Railroad in 1971?

6 A He was.

7 O Directing your attention to October 20, 1971, did
8 you have a conversation with Mr. Julert regarding a suitcase
9 that he checked in on that day?

10 A I did.

11 O Will you tell us where that conversation occurred?

12 A The conversation occurred about 1:15 or 30 in the
13 afternoon when I went down to pick up the company and the U.
14 S. Mail for the ticket office.

15 He called my attention to a grip being checked
16 in at approximately 11:15 in the morning and stated the
17 following when I would be working there, that if it was
18 picked up after 11:15 there would be an another 50¢ storage
19 collected.

20 O Was Mr. Julert working the Thursday and Friday
21 following this day?

22 A He was not. They were his days off.

23 O But you were working, is that correct?

24 A I was.

25 O Did you have occasion to observe the suitcase?

1
2 A I did.

3 O Where was it?

4 A It was in the cage in the baggage room, on the
5 first floor of the terminal.

6 O On Saturday did you again have occasion to see the
7 grip?

8 A I did.

9 O Did you also speak to Mr. Julert?

10 A I did.

11 O Where did that conversation take place?

12 A That conversation took place in the baggage office
13 when I went down to pick up the company mail and the U. S.
14 mail in the afternoon, about 1:15.

15 I made the remark to him, I said, "I see the grip
16 is still here." And I said, "I was under the impression it
17 was to be left here only one or two days when it was checked."

18 He made the assertion that it was.

19 I then went over to the cage in the baggage room
20 and inside the cage where the grip was, and looked at it and
21 picked it up and shook it.

22 THE COURT: What date was this, Mr. Sibold?

23 THE WITNESS: On Saturday, that would be October
24 23rd.

25 THE COURT: Thank you.

2 O Did you notice anything when you picked up the suit-
3 case?

4 A I noticed it was unusually heavy and there was a
5 swishing sound to the contents inside.

6 O Did you observe this suitcase on Sunday?

7 A I went down to the baggage room at approximately
8 the same time on a Sunday, to pick up the company mail and I
9 noticed the grip in the cage.

10 The cage was locked and Mr. Julert was in the off-
11 ice and there was no conversation.

12 O On Tuesday, the 26th of October, did you have
13 occasion to be down at the Union Terminal?

14 A I went down on Tuesday to pick up my pay check,
15 that being my day off. I had a conversation with Milt Julert
16 on the grip still being there, and I asked him and also
17 suggested to him that he contact the Penn Central police de-
18 partment captain, Al Blevins, or a lieutenant in regard to the
19 grip being there.

20 He told me that he had not and went down to the
21 police department on this Tuesday, October 26, and inquired
22 for Al Blevins was not in the office. I was told he was out
23 of town on company business.

24 O On Tuesday did you attempt to open the suitcase?

25 A Yes, I did.

1
2 O Were you successfull?

3 A I was not.

4 O What was the nature of your discussion with Mr.
5 Julert about the suitcase? Tell us what he said to you and
6 what you said to him, to the best of your recollection.

7 A I was told that the grip was --

8 MR. McAlevy: Can we fix a time and place for the
9 instant testimony? He never talked to Mr. Blevins on Tuesday.

10 MR. FELD: Mr. Julert.

11 MCALEVY: I am sorry.

12 A I was told that the grip was to be checked there
13 for one or two days and at the time that it was checked there,
14 there was a conversation in regard to it being put in a parcel
15 locker in the concourse of the depot and the gentleman de-
16 manded that it be left in the baggage room.

17 O Did Mr. Julert raise any susicions, say that he
18 felt suspicious?

19 MR. SLOTNICK: Objection to the form of the question,
20 your Honor.

21 THE COURT: No, I will allow it.

22 O Did he say anything with respect to whether he
23 thought the suitcase was suspicious ornot?

24 A He did. I also decided that it was suspicious.

25 O Did you weigh it at any time?

1
2 A It was either on Saturday, October 23rd or Tuesday,
3 October 26th, when I placed it on the platform scales in our
4 baggage area and the weight of the grip was 24 pounds.

5 I knew for a Samsonite case this size, that this
6 was entirely too much weight for it to have clothes and a
7 pair of shoes in it. There had to be something else.

8 Q Did you have any idea what was inside?

9 A I had no idea whatsoever.

10 Q Now, on Wednesday, the 27th, did you have occasion
11 to speak to Mr. Blevins?

12 A On Wednesday, October 27th, I was a ticket agent in
13 the ticket office and went down to the baggage room to pick
14 up the company mail.

15 The grip was still in the cage in the baggage room,
16 and I did have a conversation with Milt and from there I went
17 to the police department office and had a conversation with
18 Al Blevins on the grip.

19 Q What did you tell him and what did he tell you?

20 A I told Al Blevins that the grip had been checked
21 there in regard to being left there one or two days and also
22 the conversation in regard to not being put into a parcel
23 locker in the concourse and that it was a suspicious item to
24 me and I suggested to me that it be opened up.

25 Q You told him that you wanted it opened?

2 A I suggested to Al Blevins that I wished to have the
3 grip opened up.

4 O Did you go with him and attempt to open the suit-
5 case?

6 A I did.

7 O What happened at that time?

8 A We were unsuccessful to open the grip with the
9 keys that we had and also tated to Al Blevins that it was an
10 expensive Samsonite charcoal grey case.

11 O | Did he tell you anything about getting somebody to
12 open up the grip?

13 A He suggested that he would try and get somebody to
14 help open it.

15 O On Thursday, the 28th of October, did you see Al
16 Blevins?

17 A I did.

18 O What time was that?

19 A At around about 12 noon when I was working as a
20 ticket seller in the ticket office, Al Blevins came up to the
21 counter and talked to me over the counter and asked me if I
22 could be in the baggage room at approximately 3 pm; that he
23 had some gentlemen coming down from the Toledo Police Depart-
24 ment to try to open the case.

25 O Were you at the baggage room at about three?

AR 8 1

Sibold - direct

2 A At three o'clock I walked into the baggage room
3 office.

B2 4 Q Did there come a time when Mr. Blevins and some
5 policemen arrived?

6 A At 3:15 Al Blevins came into the office, in the
7 baggage room, and had three other men with him, whom he in-
8 troduced to me as police office of Toledo.

9 Q What happened?

10 A]He told me that they came down to assist in opening
11 the grip and I was asked to get the grip out of the cage.

12 I went in the cage, got the grip from the cage and
13 went into the room off from the baggage room office.

14 Q Why did you do that?

15 A To make an attempt to open the grip, and we did not
16 do that in the office portion in case somebody might walk in,
17 because we didn't want them to see what was going on.

18 Q What did you do with the suit case when you brought
19 it into the baggage area?

20 A It was put up on to a file cabinet about waist high
21 from the ground, at which it was laid down and the police
22 officers started making attempts to open it.

23 There was a long handled screw driver used and also
24 it appeared to be a pick. Also, they had one key and also
25 paper clips.

Sibold - direct

Q Did they try to open it up with the key first?

A They tried to open the case first with the key and the key was too large.

Then between the screw driver and the papers clips the one latch came easy. On the other latch, it took some time to open it and we had wasted several paper clips and finally he did open it. That is, he unlatched the lock.

When the two locks were unlatched, I was told by one of the officers -- I do not recall as to who it was -- told me that it was Penn Central property and it was up to me to open the grip, of which I picked up the grip, placed it on the floor, took my fingers and opened each latch at the end of the grip and spread the grip open.

Q Now, what did you observe inside?

A When I opened the grip up, I noticed some towels in there; also there was a flap in there that belonged to a portion of the grip.

There was one bag marked with a "C" and there were three small bags inside and there was a count made of 11 other bags which had a total of 12 bags, plastic bags in the grip.

Q Would you tell us why you wanted this suitcase opened?

A Under the suspicious nature that the grip was checked there, and also I deemed it necessary to be opened

because there could be explosives in the grip that could go off.

O Was there any other reason?

A None whatsoever.

MR. FELD: No further questions.

THE COURT: Excuse us just a second.

(Discussion off the record at the side bar)

THE COURT: All right, Mr. McAlevy, I apologize for the interruption.

CROSS-EXAMINATION BY MR. MC ALEVY:

O Mr. Sibold, when is the first time you say the bag in question?

A About 12:15 on October 20 in the cage in the baggage room on the first floor of the Central Union Terminal.

O You weren't working as a baggage clerk that day, were you?

A I was not.

O Who was working as the baggage clerk?

A Milton Julert.

O You came around on your mail -- to deliver the mail or pick it up at one o'clock?

A I came around into the baggage room to the pigeon holes where the mail had been pigeonholed for the ticket office. As I was working in the ticket office, it was my duty to go down and pick up the company mail, both the company

2 mail and the U. S. mail.

3 O You used to do this every day when you were working
4 as a ticket man?

5 A That's right.

6 O You had a conversation with Mr. Julert?

7 A That's right.

8 O Did Mr. Julert tell you about that bag that day?

9 A He called my attention to the bag being checked
10 at about 11:15 and stated to me the next day -

11 O Sir, I am just asking you the question that can be
12 answered yes or no.

13 Did he tell you about the bag at that time?

14 A He did.

15 O As a result of that did you go into the back area
16 or the cage area and actually look at the bag?

17 A I did not go into the cage but I did look at the
18 bag.

19 O Could you see the bag from the counter?

20 A That's right.

21 O He pointed the bag out to you?

22 A Yes.

23 O No, question about that? And that was on Wednesday
24 the 20th?

25 A That's right.

Ar 12 1

Sibold - cross

2 O Now, the next two days Mr. Julert was off, was he
3 not, Thursday and Friday?

4 A That's right.

5 O You worked in the baggage department on those two
6 days, did you not?

7 A That's right.

8 O So keeping in mind what Mr. Julert told you about
9 the over charge, about the bag being kept there after 11.30
10 or 11.15 the next day, did you observe the bag on Thursday?

11 A I noticed that the bag was in the cage on both
12 Thursday and Friday when I worked in there.

13 O Let us stay with Thursday.

14 A All right.

15 O Did you notice the bag there on Thursday?

16 A I did.

17 O Did you go into the baggage room and pick it up
18 and check it on Thursday?

19 A I did not.

20 O No one came for-the bag on Thursday?

21 A No, sir.

22 O On Friday when you came to work, did you see the
23 bag in the baggage room again?

24 A I did.

25 O Did you go over and examine it at that time?

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A No, sir, I didn't.

O On Saturday you were no longer the baggage clerk but you went back to your normal duties?

A That's right.

O About one o'clock on Saturday afternoon you came around on your mail route?

A That's right.

O And had another conversation with Mr. Julert who was back from his two days off?

A That's right.

O At that time you had a conversation with Mr. Julert about the bag?

A I did.

O Mr. Julert said he was suspicious of the bag?

A He said he was.

O Did you tell you what he thought was in the bag?

A He did not.

O Did you go over at that time and examine the bag?

A On that Saturday, October 25, I did go -- October 23rd, I did go over into the cage and I did inspect the bag and lifted it up and shook it.

O] Did Mr. Julert tell you he had done the same thing on Wednesday?

A He told me he noticed it was a heavy grip. He

1
2 didn't specify to me that he lifted it up, on that Saturday,
3 to me.

4 O When you were doing that, shaking and lifting it,
5 Mr. Julert was observing you do this, was he not?
6

7 A He was.

8 O No question about that?

9 A That's right.

10 O No question about that happened on Saturday, Octo-
11 ber 23rd, when you did that?

12 A That's right.

13 O It didn't happen on Tuesday, October 26th, the first
14 time you lifted and looked at that bag, isn't that a fact?
15 Let me rephrase the question.

16 The first time you picked up this bag and swished
17 it around wasn't Tuesday the 26th, it was, as you testified,
18 Saturday the 23rd?

19 A On Saturday the 23rd, yes, sir.

20 O Mr. Julert was present?

21 A That's right.

22 O Now, who suggested that the railroad police be
23 called in?

24 A I suggested it to Milt Julert.

25 O He was actually in charge of the baggage room,
was he not?

1
2 A He was.

3 O Do you know if Mr. Julert called any member of
4 the railroad police?

5 A He did not.

6 O Did you call any member of the railroad police?

7 A On Tuesday --

8 O No, on Saturday?

9 A I did not.

10 O Now, on Sunday, did you work Sunday?

11 A I did.

12 O Did you see the bag on Sunday at any time?

13 A I went into the baggage room on Sunday to pick up
14 the company mail for the ticket office.

15 O Did you have any conversation?

16 A The cage was locked, saw the grip in there, Milt
17 Julert was not about.

18 O By the way, that cage is also kept locked is it
19 not?

20 A It was supposed to be, yes.

21 O That was a regulation you had?

22 A That is right, sir.

23 O Did you have any discussion with respect to the bag
24 on Sunday with Mr. Julert?

25 A I did not see Milt Julert on Sunday.

O

1 O Did you have any discussion with him?

2 A No.

3 O Did you speak to any member of the railroad police
4 on Sunday?

5 A No.

6 O On Monday you were off, were you not?

7 A I was.

8 O Did you come to the railroad station at all on
9 Monday?

10 A I did not.

11 O On Tuesday, it was your day off also, was it not?

12 A It was.

13 O But you did come to the railroad station on Tuesday
14 didn't you?

15 A I did.

16 O What was the purpose of coming in?

17 A I went down Tuesday to pick up my pay check.

18 O Where did you pick it up?

19 A At the baggage room.

20 O Mr. Julest gives it to you?

21 A That's right.

22 O At that time did you have a conversation concerning
23 the bag?

24 A I did.

2 O Did you go in and shake it around again?

3 A I did.

4 O Mr. Julert was there with you?

5 A He was.

6 O Did you have a conversation then with respect to
7 calling in the railroad police at that time?

8 A I did.

9 O You called up Captain Blevins?

10 A I didn't call him, I went to his office.

11 O He wasn't there.

12 A He was not in. There were two other officers in
13 the office. They suggested to me that Al Blevins was out of
14 the city on company business.

15 O Did you need Al Blevins to help you open that bag
16 or couldn't you use another member of the railroad police?

17 A There was a lieutenant in the office at the time.
18 Then he was called out on a report.

19 O What about the other officer?

20 A I had asked for Al Blevins when I went in there --

21 O Sir, the question to you is did it have to be Al
22 Blevins?

23 A It didn't have to be.

24 O There were other officers in the police department
25 office at that time, were there not?

1
2 A Yes.

3 O Did you ask one of those officers to come down with
4 you on Tuesday while you were attempting to open the bag?

5 A The desk man was --

6 O Sir, did you or didn't you?

7 A I did not.

8 O Now, on Wednesday, when did you speak to any mem-
9 ber of the railroad police for the first time?

10 A I spoke to Al Blevins on a Wednesday morning.

11 O In his office?

12 A In his office.

13 O What did you say to Captain Blevins?

14 A I told Al Blevins that on October 20, on a Wednes-
15 day, there had been a grip parcel checked in the baggage room
16 when Milt Julert was working and the man that had checked it
17 had suggested it to be left one or two days.

18 Milt had suggested for it to be placed in a parcel
19 locker in the concourse of the depot, and the man had de-
20 manded it be left in the baggage room.

21 It was also explained to the gentleman where the
22 concourse was open 24 hours a day where he might pick up the
23 case and I suggested to Al Blevins that it was checked under
24 a suspicious nature.

25 O I see. What was that suspicious nature, sir, that

1
2 it was checked under?

3 A That the man didn't want to put it in the concourse
4 in the depot.

5 Q That made it suspicious?

6 A That is right.

7 Q Well, didn't the Penn Cnetral Railroad in October
8 of 1971 provide a service to check bags at a certain rate per
9 day?

10 A Not 24 hours of the day under baggage rates.

11 Q In other words, it wa forbidden to accept bags
12 for more than a 24 hour period?

13 A We were not forbidden.

14 Q]So it wasn't forbidden by any regulation, was it?

15 A No, it was not.

16 Q In fact, do you recall what the actual ticket stub
17 says with respect to bags left for a certain amount of days?

18 A I do recall.

19 Q Tell us what that says with respect to the days?

20 A Left for 30 days and in regard declaring the valua-
21 tion, there would have to be an additional charge made for
22 an additional \$100.

23 Q Now, sir, in other words, if the bags were kept
24 there for a period in excess of 30 days, then there was a
25 certain restriction that would be put on that bag, isn't that?

fact?

A That is right.

O So you accepted bags then for an amount of 30 days and just charged people a fee per diem, isn't that so?

A That's right.

O That is one of the reasons that baggage area was there, to accept parcels or suitcases or trunks, et cetera, isn't that a fact?

A Could I --

O Can you answer this yes or no?

A I would have to add something else to this.

O When can't you answer it yes or no and then add.

A I can't.

O So this was suspicious because the man asked to have his bag placed in the custody of a member of the Penn Central Railroad?

MR. FELD: I object to the form of the question.

THE COURT: Yes, sustained.

O What else made it suspicious in your mind, sir?

THE WITNESS: Will you please give me permission to explain what brought this about?

THE COURT: What brought what about? Were there other things that aroused your suspicion? That is what he is asking you.

THE WITNESS: I want to explain.

THE COURT: Can you answer this question?

THE WITNESS: No.

THE COURT: He says he can't answer it.

O Didn't you tell Captain Blevins at approximately 1.30 in the afternoon on Wednesday, the 27th, that you were sceptical of the grip and for the protection of the company you wanted Blevins to come to your office, lift it up, because there may be explosives or something in it?

A That is right.

O No question about that?

A That is right.

O You told Captain Blevins that you thought there might be explosives or something in that bag?

A That's right.

O As a result of that conversation did Captain Blevins come down to the baggage area?

A He did.

O When he got there were you present?

A I was.

O Who panted the bag out to Captain Blevins?

A I got the bag out of the cage and set it on the baggage room floor and we used several baggage keys that he had to try to open the Samsonite case, and we could not.

1 Q Who did that?

2 A I did.

3 Q Where did you get the keys?

4 A They were keys that had been lost and we had saved
5 them for such purposes.

6 Q To open up bags?

7 A That's right.

8 Q And Captain Blevins was there helping you, was he
9 not?

10 A He watched me.

11 Q Didn't he give you the keys?

12 A We had the keys in the baggage room office.

13 Q So you went and got the keys yourself?

14 A That's right.

15 Q What did Captain Blevins do when you were trying
16 to open the bag on the 27th?

17 A Stood there.

18 Q You were unsuccessful in your efforts to open the
19 bag on that day, were you not?

20 A That's right.

21 Q What happened next with respect to the bag?

22 A Al told me that he would try and get somebody to
23 help open it up.

24 Q Did he tell you who that person or persons would be?

1
2 A He did not.

3 Q Did anything else happend that day, on the 27th,
4 concerning the bag?

5 A No.

6 Q On the 28th did you have a conversation with Al
7 Blevins?

8 A He came up to the ticket office on October 28th
9 at about noon and talked to me over the counter and told me
10 that there would be somebody down from the Toledo police
11 department that afternoon and asked me if I could be down to
12 the baggage room about 3 o'clock in the afternoon.

13 Q He told you something else then too, didn't he,
14 sir? Didn't he tell you something else at that time?

15 A I can't recall.

B4 16 Q Let me see if I can help you.

17 Did Captain Blevins tell you that in the event
18 someone came in to pick up that grip that you were --

19 A I was told --

20 Q Sir, can I continue my question?

21 A Yes.

22 Q Did Captain Blevins at that time also tell you if
23 someone came to pick up the bag you were to get a description
24 of the man's physical appearance, ask him to sign the back
25 of the check so you could get a sample of his handwriting and

attempt to take the license plate number of his car?

A I was told that.

Q Was it told to you when you first had that conversation with him on Thursday, the 28th day of October, is that right?

A That is right.

Q No question about that?

A That's right.

Q So you were prepared to do this, were you not?

A That is right.

Q In accordance with the instructions of Captain Blevins of the railroad police?

A That is right.

Q Now, nobody came though to pick up that grip on that day?

A Nobody.

Q When is the next time you say Captain Blevins that day?

A At about 3.15 in the afternoon.

Q Who was with him?

A Al Blevins and three men from the Toledo police department.

Q You didn't know the names of those officers at that time, isn't that a fact?

1
2 A I had never saw them before.

3 Q But you did know they were members of the Toledo
4 police department, did you not?

5 A I was told they were.

6 Q Who told you that?

7 A Al Blevins.

8 Q What did Captain Blevins tell you these men were
9 going to do?

10 A Al Blevins told me they were going to attempt to open
11 the suitcase; that is when I was introduced to these men.

12 Q He told you that the police were going to open the
13 suitcase, isn't that a fact?

14 A That's right.

15 Q Who told you to get the bag and to bring it into
16 the back room?

17 A Al Blevins.

18 Q You obeyed his instruction, did you not?

19 A I did.

20 Q You picked it up and walked into the back room,
21 did you not?

22 A I did.

23 Q The reason you did that is because you didn't want
24 any of the public to see what was going on there?

25 A That's right.

1 Q Did you close the door to the back room then?

2 A We did not.

3 Q Did anyone from the outside look into that back room
4 and see what you people were doing?

5 A They could not.

6 Q Isn't it a fact that the only people in that back
7 room were you, Captain Blevins and three members of the Toledo
8 police department?

9 A That's right.

10 Q You placed the bag on some desk or chair, isn't
11 that a fact.

12 A Filing cabinet.

13 Q And then what happened?

14 A These officers, two of them, attempted to open the
15 case. The one fellow was using a long handled thin bladed
16 screwdriver and another object that appeared to be a pick.

17 Q Did you ever learn the name of that officer?

18 A I was introduced to all three men at the time they
19 walked into the office. I could not remember their names.

20 Q I mean at this time, right today, sir, do you know
21 the name of the man that was using the screwdriver to open the
22 bag?

23 A At the time I did not pay attention.

24 Q Do you know what his name is today?

1
2 A No.

3 Q Do you know who officer Ryan is today?

4 A I do know George Ryan.

5 Q He came with you from Toledo with you, did he not?

6 A That's right.

7 Q To your knowledge was it Ryan that had the screw-
8 driver?

9 A It was not.

10 Q Do you know the name of either of the other men
11 that were there from the Toledo police department with the
12 exception of George Ryan? Did you ever learn their names?

13 A I do know Bob Beavers.

14 Q All right. Now, was Bob Beavers the man that
15 tried to open it up?

16 A He assisted.

17 Q Who was the man with the screw driver or the im-
18 plement that he had?

19 A In fact, both men used them.

20 Q Officer Beavers also attempted to open that
21 suitcase up, isn't that what you are telling us?

22 A That is right.

23 Q No question about that?

24 A All the gentlemen with him.

25 Q So both Beavers and the man whose name you don't

1 know, both tried to open that up?

2 A That's right.

3 Q They were successful in opening it up up, one of
4 the latches, were they not?

5 A Easily, yes sir.

6 Q Then there was some difficulty these gentlemen had
7 opening the second latch, isn't that a fact?

8 A That's right.

9 Q They couldn't do it with the screwdriver they had,
10 could they?

11 A Not without the assistance of paper clips.

12 Q I see. Who provided the paper clips to them?

13 A Al Blevins and myself.

14 Q Who requested these paper clips?

15 A At first Al Blevins went down to his office and got
16 some and then there was more needed and I got those from the
17 baggage room office.

18 Q So you and Captain Blevins both helped these police
19 officers by providing them with paper clips to help them open
20 the suitcase, isn't that a fact?

21 A That's right.

22 Q No question about that?

23 A That's right.

24 Q The suitcase was subsequently opened, was it not?

1
2 A That's right.

3 Q That took about roughly 15, 20 minutes to do it?

4 A I would say between 12 and 15 minutes.

5 Q Fifteen minutes. Now, when it was opened, how did
6 you know that the bag was unlocked?

7 A When they unlocked the grip you could hear the
8 click and after the second lock clicked, I knew that it was
9 unlocked.

10 Q By the way, you were removed about 7 or 8 feet from
11 where the bag was placed outside of the time when you went down
12 to get the paper clips; you were that distance away from
13 the bag while the officers were working on it, were you not?

14 A Approximately that.

15 Q And the officers were much closer to the bag, were
16 they not?

17 A That's right.

18 Q After the bag was opened or unlocked, who told you
19 to open that bag?

20 A I did not know which officer told me to open it.

21 Q But it was an officer of the Toledo police de-
22 partment, was it not?

23 A That is right.

24 Q Will you consider this opening of the bag, sir,
25 a joint effort between yourself, Captain Blevins and the

1
2 Toledo police?

3 MR. FELD: Objection, your Honor.

4 THE COURT: Sustained.

5 MR. McALEVY: No further questions.

6 BY MR. FEITELL:

7 Q When as bag is checked in down at the key locker
8 area, the cage area, after a certain number of days the
9 railroad can dispose of the bag if it is not claimed, is that
10 right?

11 A That is right.

12 Q How many days is that?

13 A 30 days.

14 Q 30 Days? Did you testify in the Court of Common
15 Pleas, Lucas County, Ohio on February 28, 1972 before Judge
16 Connors?

17 A I did.

18 Q Well, was this question put to you and did you make
19 this answer:

20 "Q There is something on there relating to 60
21 days, is there not?

22 "A Charges for checking will be 25¢ for the first 24
23 hours or fraction thereof and 25¢ for each 24 hours or fraction
24 thereof. Bags or parcels remaining on hand 60 days may be
25 sold for charges."

1
2 Was that question put to you and did you make that
3 answer?

4 A No, sir.

5 Q Never said that?

6 A No.

7 MR. FEITELL: May I have this marked for identifica-
8 tion, page 19 of the minutes of the Toledo proceedings.

XXXX

9 (Defendant's exhibit Q marked as an exhibit for
10 identification.)

11 MR. SLOTNICK: Perhaps we will mark the entire
12 minutes and then Mr. Feitell can refer to Q at page 19 and
13 it may be used again?

14 (Transcript so marked.)

15 Q Please take a look at page 19.

16 A Could I explain that?

17 Q No, just a minute, please.

18 A I know what the 60 days is. I can explain that.

B5

19 Q Just a minute, please. Would you look at page 19
20 and read the material which I bracketed, which is the ques-
21 tion I just read. Read it on the paper and tell me if that
22 refreshes your recollection that you testified concerning
23 60 days.

24 A There is something on --

25 Q Just a minute, does that refresh your recollection

1
2 that that question was put to you and you gave that answer?
3 That is the only thing I am asking.

4 A Yes.

5 Q So this was asked of you and that is the answer
6 you gave?

7 A That is right.

8 Q Now, you found out after speaking to Mr. Blevins
9 that police officers from the Toledo police department were
10 going to come to the baggage areaa, is that right?

11 A Rephrase that again, please.

12 Q You found out from Captain Blevins that certain
13 police officers from the Toledo police department were going
14 to come to the baggage room on the 28th, right?

15 A That's right.

16 Q What was the reason they were coming there, these
17 officers, to do what?

18 A To open up the grip.

19 Q Just to open it up?

20 A That's right.

21 Q To hell you open the bag and that is it?

22 A That's right.

23 Q Did you ever testify anywhere that the police
24 officers, it was your understanding, were coming to check the
25 bag -- check the bag?

2

A I did not.

3

Q Nobody ever told you that the police officers were

4

coming down to check the bag, right?

5

A I had suggested --

6

Q Do you understand my question?

7

A No.

8

Q Now, on page 9 of the minutes in the Ohio Court,

9

Lucas County, was this question put to you and did you make this answer, starting on page 9:

10

11

"Q And did you then have anything further to do with that case after that conversation" -- referring to the conversation with Blevins.

12

13

14

"A On Thursday and Fridays when they would get short-handed at the ticket office with a line up to buy tickets and I was at the ticket office selling tickets. It was right afternoon and Captain Blevins came up and asked me if I was going to be around about 3 pm and I asked him what was up. He told me he was having some men come down to check over the grip."

15

16

17

18

19

20

21

Were you asked that question and did you give that answer?

22

23

A I must have.

24

Q On page 31 of the record was this question put to you and did you make this answer:

25

1
2 "Q And he indicated to you at that particular time
3 that some of the finest from Toledo would be out around three
4 o'clock to take a look at the suitcase, isn't that true?

5 "A He talked to me right after 12 o'clock and asked
6 me if I would be at the baggage room approximately three p.m.,
7 that some gentlemen were coming down from the Toledo police
8 department to check the grip over."

9 Was that question put to you and did you make that
10 answer?

11 A That is right.

12 Q Incidentally, in talking to Captain Blevins, did
13 you know if one officer was going to come down or more than
14 one?

15 A I was not told how many were coming.

16 Q Did you have any understanding that more than one
17 person was coming down?

18 A I did not.

19 Q You didn't have the slightest idea if more than
20 one person was coming down, right?

21 A I did not.

22 Q Let us go back to page 10, the question that I
23 just read to you, of your testimony in Lucas County.

24 Did you indicate during your testimony that there--
25 it was indicated to you that there were going to be some men

1
2 that were coming down, not a single man but some men?

3 Did you testify to that effect that Blvins told you
4 that more than one man was coming down, some men were coming
5 down? Did you so testify in Ohio?

6 A I understood I did.

7 Q In fact, did you so testify more than once that
8 gentlemen, or some men were coming down, right?

9 A Right.

10 Q Will you look on page 10 of those minutes --

11 THE COURT: If he doesn't contradict it I don't
12 want to refer to the minutes.

13 MR. FEITELL: I cleared up this impeachment through
14 one contradictory statement but I can clear it up three times.

15 THE COURT: He told you he did say that, some men,
16 and what is the impeachment?

17 MR. FEITELL: He said it three times in these
18 minutes.

19 THE COURT: All right, go ahead.

20 Q You were sworn there, you took an oath, did you not?

21 A I did.

22 Q You have any printed rules or regulations that you
23 operate under in connection with your duties at that time?

24 A We did have.

25 Q You had a suspicion there might be some explosives

1
2 in the bag, is that correct?

3 A That is right.

4 Q The basis for that was this swishing sound that
5 you heard, right?

6 A That's right.

7 Q Did you call any of your superiors at your place
8 of employment and tell them you were going to undertake to
9 open the bag?

10 A What do you mean?

11 Q Is there anybody over you in your job?

12 A I was under the superintendant.

13 Q What is hisname?

14 A G. L. Morris at that time.

15 Q Did you tell Mr. Morris?

16 A I did not.

17 Q At the very moment you opened the bag, the police
18 were there, the local police?

19 A That is right.

20 Q From the City of Toledo. And they wouldn't open
21 the bag, right?

22 A That's right.

23 Q They wouldn't physically lift the lid, right?

24 A That's right.

25 Q They told you to do it?

1

Q They told you to do it?

2

A That's right.

3

4

s Q They stepped back after the locks were snapped, right?

5

6

A That is right.

7

8

Q And they knew you were going to open up the bag, right?

9

A That is right.

10

MR. FELD: Objection, your Honor.

11

12

Q If you were opening up the bag, I presume they let you do it right in their presence, right?

13

MR. FELD: Objection.

14

THE COURT: Sustained.

15

16

Q Incidentally, this suitcase in the cage, that wasn't the only case there, was it? You had other suitcases in the cage?

17

18

A Not in the cage, no.

19

Q But you had other cases in the baggage area?

20

21

A That was grips that were checked on arrivals from the train, but not parcel checked.

22

Q Not parcel checked?

23

A No, sir. This was the only parcel grip there was.

24

25

Q You had other suitcases in the area at that time, through this period, right?

1
2 A That is right.

3 MR. FRITELL: That is all.

4 THE WITNESS: Your Honor, there is something I
5 want to clear up.

6 MR. MC ALEVY: I object to any explanation or
7 conversation with the Court at this time. I think it is
8 highly improper.

9 MR. FELD: You will explain it on re-direct examina-
10 tion.

11 THE COURT: All right, just hold it please. Wait
12 until you are asked a question.

13 BY MR. SLOTNICK:

14 Q Mr. Witness, isn't it true --

15 MR. FELD: Objection, your Honor, he can address
16 the witness by his name.

17 MR. SLOTNICK: I didn't think it was offensive.
18 I am sorry.

19]THE COURT: Don't you remember his name?

20 MR. SLOTNICK: I didn't remember his name.

21 THE COURT: All right, get somebody to tell you his
22 name, and use it please.

23 MR. SLOTNICK: I apologize for not remembering your
24 name.

25 Q A- a matter of fact, isn't it true that right after

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Sibold - cross - redirect

the police opened the grip in your presence they told you to go over and open it and in turn you took the latches on each end, lifted them up and opened the grip?

A I did.

Q Isn't this statement, the question I asked you, is that correct?

A That is right.

MR.SLOTNICK: No further questions.

B 6

REDIRECT EXAMINATION BY MR. FELD:

Q Mr. Sibold, counsel showed you this excerpt from the testimony of a previous occasion, page 19.

MR. SLOTNICK: What is the purpose of this?

THE COURT: I didn't hear the question yet. He hasn't even finished the question and two people jump up. Sit down.

MR. SLOTNICK: I object to the procedure before the question is asked.

THE COURT: Overruled.

Q Counsel asked you whether you were asked that question and made that response and you wished to make an explanation about that .

What do you wish to explain?

MR SLOTNICK: Now, I object to the witness being giving something to read from and asked a question about it.

If his recollection is lacking it might be another story but I don't think is the way it should be done.

THE COURT: Overruled.

Q Read the question to yourself and read the answer to yourself.

A I know what I said.

Q Now, tell us.

A I meant to the court at that time which I was deprived of doing, that we could not dispose of baggage ourselves, that the baggage after the 30 day period was to be send to Buffalo or to Philadelphia, after the consolidation, to the General Baggage Agent's office for disposition after 60 days, and I was deprived of it. That is what I wanted to explain. We could not sell no bags.

Q Were there tariffs that the railroad operated under which governed the baggage or parcels which were checked with the railroad, railroad tariffs? Baggage tariffs at the time?

A What?

Q Baggage tariffs?

A Yea, sir.

Q Under those baggage tariffs did you have the right to inspect a suitcase checked?

MR. FRITELL: I object to this, your Honor, as being irrelevant.

THE COURT: As irrelevant?

MR. FEITELL: Wholly irrelevant.

MR. SLOTNICK: I join in that.

MR. FEITELL: In connection with a tariff.

MR. SLOTNICK: He is asking for a conclusion of law.

MR. MC ALEVY: I object to it as out of the scope of either the direct or cross-examination.

THE COURT: I sustain Mr. Slotnick's objection; I overrule the others.

Q Counsel on cross-examination asked you about the rules and regulations that you operated under; is that correct?

A That is right.

Q Under those rules and regulations --

THE COURT: Look, do you have the rules and regulations?

MR. FELD: No, I don't.

THE COURT: I am not going to let him recite them.

Q During the time that the case was in the caged area was the cage locked, the baggage area was locked, is that correct?

A Not at all times, no.

Q Not at all times? Well, when no one was in charge of the baggage area in the evening, was it locked?

A It was.

2 Q Who had access to that with a key?

3 A The janitor on duty.

4 Q Did you have a key?

5 A I did.

6 Q Mr. Julert have a key?

7 A He did.

8 Q Were you at any time concerned about the janitor
9 having access to that suitcase?

10 A I was.

11 Q Tell us the nature of the concern?

12 MR. MC ALEVY: I object to this as being out of
13 the scope of the direct examination or the cross-examination.
14 I don't recall that question being asked or anything near it.

15 MR. FELD: I think it is within the scope of the
16 cross-examination because he was asked on cross-examination
17 about whether the caged area was locked or not.

18 THE COURT: All right.

19 A When Milt Julert or myself was in the office the
20 baggage door was unlocked. In the event we left the office
21 it was locked. And after the hour of 7.30 p.m. it was sup-
22 posed to be locked until 7.30 the following morning.

23 Q Now, there were janitors on duty in the evening?

24 A That is right.

25 Q Did they have access to it?

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Sibodl - redirect

1
2 A They had a key to the cage.

3 Q Were you concerned about them having access to
4 the cage with the suitcase?

5 A I was.

6 Q Why were you concerned?

7 A For the reason that when the case is given out by
8 one of the janitors, because we were responsible for collecting
9 the total amount of tariff, and if they did not collect the
10 total amount, we had to reimburse the company the difference.

11 Q Now, on cross-examination I believe that you were
12 asked whether the police told you to open up the suitcase. Is
13 that correct? You were asked that question?

14 A That is right.

15 Q You said, I believe, that you were told to open up
16 the suitcase.

17 Could you tell us, to the best of your recollection,
18 exactly what the officers said to you at that time?

19 A They told me it was Penn Central property and it
20 was my responsibility to open up the case.

21 Q That is all they told you?

22 A That is right.

23 Q You don't remember anything else?

24 A I do not.

25 MR. FELD: No further questions.

RE CROSS-EXAMINATION BY MR. MC ALEVY:

Q Sir, isn't it a fact that after you heard the clicks, one of the Toledo police officers called you right over and told you to open the case?

A The statement was it was it was Penn Central property and it was my responsibility to open it.

Q Did you ever testify to this effect in any court before?

MR. FELD: Objection.

THE COURT: Sustained.

Q Sir, would you have been able to open the suitcase without the help of the Toledo police department?

A No, sir.

BY MR. FEITELL:

Q At page 43 of the Ohio hearing was this question put to you and did you make this answer:

"Q How long after the Toledo police officers picked the locks of the grip before you opened it up?

"A They called me right over and told me to open it up and I in turn took the latch and lifted it up and opened the grip."

Was that question put to you and did you make that answer?

A I was told it was Penn Central property and it was

2 my responsibility to open it up.

3 Q You were under oath at that time?

4 A That is right.

5 MR. FEITELL: I offer this in evidence, page 43.

6 (Defendant's exhibit R received as an exhibit in
7 evidence.)

8 MR. FEITELL: Will you bear with me a moment,
9 your Honor?

10 (Pause.)

11 MR. FEITELL: That is all.

12 MR. SLOTNICK: No questions.

13 MR. FELD: I have nothing further.

14 THE COURT: Thank you.

15 MR. PANZER: Just one question with respect to this
16 witness. I would like to know if the government is going to
17 call this witness at the trial in chief so I don't have to
18 subpoena him and the second question is, will they make him
19 available to me for a short time today so I can speak to him?

20 MR. FELD: We would give the same response we gave
21 to that request yesterday.

22 THE COURT: All right.

23 (Witness excused.)

24 THE COURT: We will take ten minutes.

25 (Recess.)

MR. FELD: The government calls George Ryan.

GEORGE J. RYAN, called as a witness on behalf of the government, being first duly sworn was examined and testified as follows:

DIRECT EXAMINATION BY MR. FELD:

Q Mr. Ryan, how are you employed?

A At the present time I am employed in Toledo, Ohio.

Q In what capacity?

I am claims investigator for the City of Toledo.

Q In 1971, who were you employed?

A I was employed as a police officer for the City of Toledo, Ohio.

Q What was your rank?

A I was a detective.

Q How long had you been employed in this position?

A Since October 1, 1946 up until 1971.

Q What was your assignment at that time?

A Prior to retirement I was on the morals squad of the police department.

Q Do you know an individual by the name of Al Blevins?

A Yes, sir, I do.

Q Can you tell us who he is?

A I met MR. Blevins when he came and made himself known in the police department when he first was assigned to

2 the Toledo area with the Penn Central Railroad.

3 Q How long had you known him prior to October, 1972?

4 A Approximately a year; maybe 11 months.

5 Q What was the nature of that relationship?

6 A I met Mr. Blevins when he first came to Toledo with
7 his chief of police. We met in a hall, introduced each other.
8 After that time we have seen each other off and on and built up
9 a friendship and Mr. Blevins would call me when he had problems
10 that the Toledo police could assist him on or help him with,
11 just to facilitate his work and cut some of the red tape in
12 connection with the department.

13 Q Were you his primary contact in the department,
14 would that be a fair characterization?

15 A Yes, sir.

16 Q On October 27, 1971, did you receive a telephone
17 call from Mr. Blevins?

18 A Yes, sir, I did.

19 Q Approximately what time of day was that, morning
20 or afternoon?

21 A 1.30 or 2 o'clock in the afternoon, sir.

22 c Q Could you tell us what he said to you and what you
23 said to him during that conversation?

24 A I had a call when we were in the process of chang-
25 ing over our office from one location to another. I happened

1
2 to be in the Safety Building on this particular day and time
3 when I answered the phone, in the morals squad office.

4 Captain Blevins talked to me and said that he
5 wondered if I had any keys that would open a suitcase or if I
6 knew of anyone who would open the suitcase and I replied to
7 that inquiry that I would check into it and get back to him
8 later on.

9 Q What did you do in regard to this request?

10 A I didn't do anything that day, sir.

11 Q Did you do anything the next day, the 28th?

12 A In the afternoon or early --perhaps it was around
13 noon, I went to the property room custodian located in the
14 Safety Building and talked to the custodian and asked him if
15 he had any keys that would open a suitcase lock.

16 Prior to this, the former custodian was a saver
17 and he had a bunch of keys down there in a box and I thought
18 perhaps they were still there.

19 The new custodian told me when he took over he
20 threw the keys out and he had no keys, that would open locks
21 of that nature. But he did suggest that I go to the armory
22 just down the hall from the property room and talk to Officer
23 Bedal, who had some knowledge of opening locks.

24 Q Did you go to see Bedal?

25 A Yes, sir, I did.

2 Q When was that?

3 A Almost immediately on the 28th I went to see Bedal
4 and told him what I needed and asked if he could help me and
5 could he be free later on in the afternoon.

6 Q Did you later meet with Officer Bedal on the 28th?

7 A I did, sir.

8 Q Where was that?

9 A On the Safety Building ramp, which is where the
10 police vehicles are kept.

11 Q Approximately what time was that?

12 A Near three o'clock, sir.

13 Q Did you meet anyone else there at that time?

14 A Yes, sir, I did.

15 Q Who was that?

16 A As I was leaving the building I met Bedal, who was
17 waiting there for me. And coming up into the Safety Building
18 was Robert Beavers, who was another police officer and I asked
19 Bob to go with me.

20 Q Why did you ask him to go with you?

21 A He was going back out to the Metropolitan Unit which
22 we were both assigned to, he didn't have a vehicle and his work
23 in the Safety Building wasn't of that great importance and he
24 went along with me to the Central Union Terminal and all three
25 of us went there together.

Q Did you tell him what you were going to do?

A ON the way down, yes, sir.

Q What did you say?

A Blevins had called the day before requesting that if I had any keys or had any knowledge of anybody that could open a case.

Q Now, when did you arrive at the Union Terminal?

A] Approximately 3:15, sir.

Q What did you do when you arrived?

A We parked our vehicle and went directly to the police department in the Central Union Terminal on the ground level and there we met Captain Blevins. I introduced Officer Bedal. He had probably met Beavers but I re-introduced him at that time.

Q Then where did you go?

A Blevins and the three of us went down into the baggage area where we met Mr. Sibold.

Q What happened there?

A And Blevins introduced us to Sibold and all three of us -- and told him why we were there.

Mr. Sibold then went and got the suitcase, which was in the baggage area, and brought it down to the read of the baggage area, placed it on a filing case.

Q What happened then?

1
2 A At that time Bedal who had a screwdriver with him
3 and a pick of some type, so paper clips, started to work on
4 the lock mechanism of the suitcase.

5 Q Who supplied the paper clips?

6 A Mr. Sibold and Captain Blevins.

7 Q What did Officer Bedal do?

8 A He started to work on the locks. He got one fairly
9 easily, it snapped quickly. And he started to work on the
10 second one.

11 He had some difficulty with the second one. I
12 assisted him a little bit, held the screw driver while he
13 actually used the clip and after a few minutes, he snapped
14 that lock also.

15 Q Then was the suitcase placed on the floor?

16 A Mr. Sibold then took the suitcase from the filing
17 cabinet, placed it on the floor and opened the case.

18 Q Now, did you instruct him to open up the suitcase?

19 A No, sir, I did not.

20 Q Request that he do it?

21 A No, sir, I did not.

22 Q What did you observe when the suit case was opened?

23 A When the case was opened it was lying -- two sides
24 of it, there was a divider that was over one side and I could
25 see in the bag there was some plastic packets, some towels and

one fabric and two paper towels.

Q What happened then?

A I could see the one bag which was prominent to me, it was a different texture, the cellophane, and has a piece of masking tape with the initial "C" written on it.

Q Now, did Officer Beavers do anything at that point?

A He perhaps saw the contents simultaneously and he reached in and picked out the one marked "C" and opened the bag, looked in and showed it to me and I could see the contents of the bag inside.

Q At that moment did you suspect it might be drugs?

A At this moment when I viewed the contents, I did, Yes, sir. My suspicions were aroused.

Q What did Beavers do?

A He put the bag down, went to a phone, called to the Metropolitan Drug Unit. He asked that some agents be sent with a field testing equipment for cocaine.

Q You didn't have testing equipment with you at this time?

A No, sir.

Q Prior to the time that the suitcase was opened, did you have any suspicion as to what was inside?

A No, sir, I did not.

Q Did you have any idea what was inside?

1
2 A No, sir, I did not.

3 Q Prior to the time that the suitcase was opened,
4 did you have any information or suspicion whether there were
5 narcotics in the Central Union Terminal?

6 A No, sir, I did not.

7 Q Were you conducting any kind of investigation into
8 the Central Union Terminal?

9 A No, sir.

10 MR. SLOTNICK: Objection, your Honor, it is a
11 conclusory kind of matter that I think should be left to your
12 Honor to determine.

13 THE COURT: No, you can cross-examine about it.

14 The answer is no?

15 THE WITNESS: Yes, sir.

16 Q At that time did you have any information concern-
17 ing Alan Morris?

18 A No, sir, I did not.

19 Q Or Harold McSpaden?

20 A No, sir, I did not.

21 Q Or Ramos?

22 A No.

23 Q Or Robert Jermain?

24 A No, sir, I did not.

25 Q John Capra?

2 A No, sir, I did not.

3 Q or Guarino?

4 A No, sir.

5 Q Stephen Della Cava?

6 A No, sir, I did not.

7 Q You didn't have any reports relating to any ac-
8 tivity of these individuals?

9 A No, sir.

10 Q What was the purpose of your being at the terminal?

11 A It was merely to assist a fellow officer on his
12 request.

13 Q To assist ?

14 A] Yes, sir, help him out.

15 Q Mr. Blevins?

16 A Yes, sir.

17 Q That is the only purpose?

18 A Yes, sir.

19 MR. FELD: No further questions.

20 CROSS-EXAMINATION BY MR. SLOTNICK:

21 Q Mr. Ryan, during the last question and answer
22 I was sort of making little noises. You considered Captain
23 Blevins a fellow officer, is that correct?

24 A He was a Penn Central police officer.

25 Q In your opinion he was a fellow officer?

2 A Yes, sir.

3 Q Prior to your leaving the Toledo station to go
4 over to Union Station, you had asked for another officer,
5 other than Badal, to accompany you, is that correct?

6 A Yes, sir.

7 Q There were other officers available at that time,
8 but eventually you asked Beavers to do with you?

9 A Yea, sir. He just happened to come on the ramp, sir.

10 Q Now, during the course of October 28th, 1971,
11 you were logging all of your time that you spent in your
12 memo book or whatever they carry in Toledo, is that correct?

13 A We file day reports.

14 Q In other words, you put down the fact that you were
15 going to the Union Station and when what occurred afterwards?

16 A No, I didn't.

17 Q When you filed the day report, did you put in your
18 day report the events of the day?

19 A I possibly did, yes, sir.

20 Q When were the day reports compiled, at the end of
21 the day?

22 A Turned them in at the end of every day.

23 Q By the end of October 28th you found so much heroin
24 and cocaine you certainly would have filed it in your report,
25 it was an important fact?

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A Yes.

Q Now, when Captain Blevins first called you, he told you that he had a bag down at the Union Station that he was suspicious of and wanted to have it opened, is that in essence what he told you?

A To the best of my recollection, sir, he told me about a bag he wanted opened and if I knew of anyone who could open it or if I had access to any keys to activate the locks.

Q Did you testify on February 28, 1972, in the Court of Common Pleas of Lucas County?

A Yes, sir.

Q Before Judge Connors?

A Yes, sir.

Q Do you recall being asked this question and giving this answer:

"Q Now, did Captain Blevins at the time of that conversation of subsequent to that tell you why he wanted the bag opened?

"A He said he had a bag down there that he was suspicious of and would like to have it opened."

Is that the answer you gave?

A Possibly, yes. If it is my testimony.

Q That is basically what happened, he indicated during the course of that conversation that he had a bag

1
2 that he had some suspicion about and that he wanted opened?

3 A The inference was that he wanted to open it for
4 some reason or the Penn Central Railroad wanted to open.

5 Q You knew it wasn't his bag?

6 A That's right.

7 Q As a matter of fact, he indicated that he had some
8 suspicion about the bomb making material, do you recall that?

9 A It came up in the conversation because he had
10 some experience in this and prior assignments or duties.

11 Q You would indicate to us, which is true, that
12 Captain Blevins was a rather reliable individual?

13 A Yes, sir.

14 Q You could rely upon what he told you and what advise
15 he might give you and what he might say about a certain type
16 of police work?

17 A Yes, sir?

18 Q Do you remember again testifying at the Court of
19 Common Pleas in Lucas County, when you were asked this ques-
20 tion and gave this answer:

21 "Q Did he indicate what the suspicion was based upon?

22 "A Well, he had experience in bombs or materials for
23 making bombs.

24 "Q This is what he told you in the initial phone
25 conversation?

1
2 "A Well, yes, sir."

3 Were those questions asked of you and did you give
4 those answers?

5 A Yes, sir. To the best of my recollection.

6 Q They were the truth at the time you gave them?

7 A Yes, sir.

8 Q And still are true?

9 A AS far as I know, yes, sir.

10 Q Therefore, as a result of that we now know that
11 Captain Blevins indicated that he had some suspicion there
12 was something wrong with that bag?

13 A Some inference, sir.

14 Q As a matter of fact --

15 A If I can, I don't know on this particular day
16 if he said I am suspicious of it. For this particular reason,
17 I just can't recollect that.

18 Q But you remember giving the answer as I have read
19 it to you, he mentioned something about bomb-making materials?

20 A Yes, sir.

21 Q As a matter of fact, if I tell you that Captain
22 Blevins told you that he wanted to have it opened because
23 he was suspicious about it, you would now recollect that is
24 basically what he told you in the context of the conversa-
25 tion, is that correct?

1
2 A Yes, sir.

3 Q So the following day you and your brother officer --
4 Beavers was your partner, wasn't he?

5 A Both assigned to the same unit.

6 Q Didn't you testify in Ohio that Beavers was your
7 partner?

8 A We were separate groups and we worked as they wanted
9 us to work.

10 Q Did you ever speak of him as one of your partners,
11 you took one of your partners?

12 A No, if I could clarify it, sir. As I was leaving
13 the Safety Building, I met Bedal who I had a prior arrange-
14 ment to meet at three o'clock on the ramp. At that particular
15 moment, unbeknownst why or what he was doing there, Beavers
16 was coming into the Safety Building to do some work.

17 Q You took him with you?

18 A I took him with me.

19 Q Prior to that you had asked someone else to come
20 with you and you say there was no one available?

21 A The previous day, sir.

22 Q You started out and Beavers was there and he came
23 with you?

24 A Yes.

25 Q Also Officer Beavers was waiting for you at the

Ryan - cross

1
2 appointed time and place?

3 A Yes, sir.

4 Q You were concerned about that bag, weren't you?

5 A Well, I was concerned and wanted to help Blrvins
6 out, yes, sir.

7 Q Now, when you arrived at the Central depot, your
8 concern arose to a suspicion, is that correct?

9 A Well, we were there and we met Captain Blevins and-

10 Q Had a conversation?

11 A Yes, and proceeded to the baggage room area.

12 Q Would you say your concern grew into a suspicion
13 that maybe there was something wrong?

14 A Not really, sir, no.

15 Q Isn't it true that when you were asked this ques-
16 tion on February 28th in Lucal County you gave this answer;

17 "Q I ask you whether your suspicion arose as a result
18 of arriving at the Central depot that is when it began and
19 perhaps started?

20 "A Yes."

21 "Q Do you know whether or not it began then?

22 "A I just have to guess, sir. If I could go back,
23 I suppose my suspicions were aroused when we moved the case."

24 When you moved the case from one area to another,
25 that is when your suspicions became aroused, is that correct?

1
2 A] Well, it was moved out of one area, sir, into
3 the back of the baggage room area.

4 Q While you were moving this, as you so testified
5 before, your suspicions became aroused about the bag to a
6 little greater concern about this bag?

7 A True.

8 Q Now, you moved the bag from one area to another
9 area for several reasons, is that correct? One of which you
10 didn't want people to see what was going on; is that correct?

11 A I didn't move the bag, sir.

12 Q Whoever moved the bag?

13 A Yes.

14 Q The second reason that it was moved was because
15 there was a fear it might contain bomb making or some sort of
16 material inside this bag?

17 A Yes, sir.

18 Q And the third reason -- leave it with the second
19 reason.

20 Now, you knew when you arrived at the station
21 as the bag was moved, you knew that you were at the station
22 for the purpose of unlocking the suitcase so that this suit-
23 case could eventually be opened, is that correct?

24 A Yes, sir.

25 MR. SLOTNICK: Do you have the suitcase?

MR. FELD: We don't have it.

Q Do you recall what the suitcase looked like?

A Yes, sir.

Q Would you describe it?

A It was a Samsonite bag, dark color grey, probably described as black.

Q Was it rather heavy?

A Yes, sir.

Q Do you remember how much?

A I didn't lift it, sir.

Q Did Officer Badal lift it?

A No.

MR. FELD: He didn't lift it, your Honor.

Q Did you see anybody lift it?

A Mr. Sibold.

THE COURT: If a man lifts it and staggers and almost falls down, it might be inferred that it was heavy.

MR. FELD: I would agree.

Q So you understood that the reason you were there was to unlock the suitcase so that it could eventually be opened?

A For the officer I brought with me to open the lock mechanism of the bag, yes, sir.

Q Then you observed Officer Badal doing certain

1
2 things?

3 A Yes, sir.

4 Q As a matter of fact during the course of this
5 you helped him?

6 A I did.

7 Q At one point, and finally -- click, click --
8 the bag was unlocked?

9 A The first lock opened very easily.

10 Q The second lock took a little more time?

11 A Yes.

12 Q And then it was unlocked?

13 A Yes.

14 Q After it was unlocked, what did you do?

15 A I just got back.

16 Q Officer Bedal step back?

17 A Yes, sir.

18 Q And Mr. Sibold then came forward?

19 A He lifted the bag from the file case and placed
20 it on the floor.

21 Q You stepped back and he came forward to the bag?

22 A He was there, it was a small area. He was right
23 around it.

24 Q There was some conversation about opening the bag?
25

1
2 A No, I didn't hear any conversation, sir.

3 Q You didn't say anything to him?

4 A No, sir.

5 Q What about Bedal, did he say anything to him?

6 A Not to my knowledge, sir.

7 Q Just after hearing the second click, you both
8 stepped back because you were both working on the bag?

9 A Yes, sir.

10 Q And Mr. Sibold went and took the bag and what did
11 he do with it?

12 A Placed it on the floor.

13 Q He opened it up?

14 A He then lifted the lock mechanism and opened the
15 bag, sir.

16 Q After he opened the bag, did you inspect the con-
17 tents of the bag immediately?

18 A I could see, sir, what was in the bag and I could
19 see the glassine packets.

20 Q Did Officer Beavers reach in and open up one of
21 these glassine packets?

22 A Reached in and picked out the one with the initial
23 "C" on it.

24 Q Did anybody instruct him to do that?

25 A No, sir.

1
2 Q He opened it up, and I guess kept on looking at it?

3 A He looked at it sir, and then he opened it and
4 looked at the contents.

5 Q After he looked at it, what did he do?

6 A Showed it to me, sir.

7 Q Prior to his opening up that sealed bag with the
8 letter C on it, and prior to your looking at the contents,
9 nothing happened. He held it in his hand.

10 Did you give him a direction of any sort?

11 A No, sir.

12 Q You looked at the bag?

13 A Yea, sir.

14 Q It was still sealed?

15 A Yes, sir.

16 Q And he opened it?

17 A Yes, sir.

18 Q As a result of his opening it, he handed it to you?

19 A Showed it to me and still held it.

20 Q You didn't touch it?

21 A No.

22 Q You looked into it and saw what you suspected to
23 be drugs, for the first time?

24 A Yes, sir.

25 Q Then you called a neutral magistrate and told him--

Ryan - dcross

MR. FELD: Objection, your Honor.

MR. SLOTNICK: I withdraw the question.

Q Did you then call a judge with regard to the bag?

A No, sir.

Q What did you do right after you inspected the contents of the cellophane packet that had just been opened by Officer Beavers?

A I did nothing, sir. Officer Beavers.

Q What did he do?

A He called to the Metropolitan Drug Unit. He asked that a field test be sent over to the Central Union Terminal and that the test kit be for cocaine.

Q Were there other bags that were still in the suitcase?

A Yes, sir.

Q They were sealed as you could see through the naked eye?

A As far as I could see, yes, they were sealed.

Q Do you know after that call or any time during the course of that day or the next week whether anybody called a judge or asked a judge about obtaining a search warrant?

A No, sir.

Q After the case was unlocked, did any of the officers make any attempt to leave the office or just stayed there to

Ryan - cross

see -- they just stated there to see what was in the bag?

A Officer Beavers went to the phone.

Q After the suitcase was unlocked, the second click, and you and Officer Beavers took one step back and Mr. Sibold reached down, while he was doing this, were you walking out the door at the time with your fellow officers?

A No.

Q You stood there to see what was in the bag?

A Yes.

Q When you opened it up, you saw glassine envelopes?

A Yes, sir.

Q They didn't mean anything at the time?

A We didn't know what the contents were.

Q Until Officer Beavers took one out and opened it up and looked at it, then you discovered what you thought might be narcotics for the first time?

A When I viewed it, yes, sir.

MR. SLOTNICK: Thank you.

BY MR. MC ALEVY:

Q Officer Ryan, you were a member of the Toledo police department how many years back in October, 1971?

A I was appointed in the department, sir, on October 1, 1946.

Q You were a detective at that time?

A In 1971? Yes, sir.

1 Q How long were you a detective?

2 A 20 years.

3 Q Working on a lot of investigations?

4 A Yes, sir.

5 Q By the way, the particular unit you were assigned
6 to back in October, 1971, was what?

7 A This was a new unit formed which was called the
8 Metropolitan Drug Unit and I was assigned to that, sir.

9 Q You were a narcotics detective back in October,
10 1971, weren't you?

11 A I was a morals squad officer and then the unit
12 was formed and I went with the unit.

13 Q What about Officer Beavers?

14 A He was also a morals squad officer and he too was
15 assigned to the Metropolitan Drug Unit.

16 Q And Bedal?

17 A He was a police officer and he was assigned to the
18 armory.

19 Q He had nothing to do with your unit?

20 A Nothing.

21 Q When you got this phone call on, I believe, October
22 27, from Captain Blevins, that is the first time you knew
23 about this suitcase, isn't that a fact?

24 A Yes, sir.

1
2 Q Captain Blevins told you about his suspicions at that
3 time, did he not?

4 A I can't recall, counsellor, if this was that particu-
5 lar day, but the inference did come out.

6 Q He told you about his suspicions before you gentle-
7 men attempted to unlock it?

8 MR. FELD: Objection, asked and answered.

9 THE COURT: I agree with that.

10 MR. MC ALEVY: I think there was some question as
11 to what time he did it. I think the officer just testified
12 he did this on Wednesday. Now I think he is telling us he
13 did it on Thursday.

14 THE COURT: What?

15 MR. MC ALEVY: Was informed about the suspicions
16 by Captain Blevins.

17 THE COURT: I will allow it.

18 Q Can you tell us when he told you about his suspicion?

19 A I can't recollect, no, sir.

20 Q It was prior to your arriving at the terminal, was
21 it not, sir?

22 A A Possibly it was, yes, sir.

23 Q How far was your Safety Building where you were that
24 day on the 28th from the railroad terminal?

25 A Approximately a couple of miles, at most.

1
2 Q Bedal and Beavers and yourself were all on duty
3 at that time, weren't you?

4 A Well, Bedal worked in the Safety Building and, yes,
5 he was on duty, yes, sir.

6 Q You were all police officers on duty at that time?

7 A Yes, sir.

8 Q Working?

9 A Yes, sir.

10 Q You went down to the train terminal to see Captain
11 Blevins, who was a captain of the Penn Central Railroad
12 police, in order to aid him in unlocking the suitcase, isn't
13 that a fact?

14 MR. FELD: Objection, your Honor.

15 THE COURT: On what ground?

16 MR. FELD: On the ground that we covered the same
17 ground.

18 THE COURT: It will be quicker for him to say
19 whatever he is going to say.

20 A We went down to the Central Union Terminal, I went
21 down there to help Blevins out.

22 Q You took two officers with you?

23 A The reason I took Beavers --

24 Q You took two officers?

25 THE COURT: Mr. McAlevy, yes, he took two officers

2 with him. Will you move on?

3 MR. MC ALEVY: Yes, sir.

4 Q When you arrived there, you had a conversation with
5 Blevins, did you not?

6 A I introduced Bedal to him, they were not known and
7 re-introduced Beavers.

8 Q Someone pointed out the suitcase to you?

9 A Captain Blevins took us then to the baggage area
10 where we met Mr. Sibold.

11 Q At that time did any of you officers pick up the
12 suitcase and examine it?

13 A No, sir.

14 Q Why not?

15 A We had no occasion to.

16 Q But there were three of you there?

17 A Yes, sir.

18 Q Three of you?

19 A Yes, sir.

20 Q You watched Mr. Sibold pick up the suitcase and
21 bring it to the back room?

22 A Yes, sir.

23 Q Who told him to bring it in the back room?

24 A Nobody.

25 Q Are you sure of that?

1
2 A I am positive I didn't, sir.

3 Q Are you sure of that?

4 A I did not tell him.

5 Q Is your answer you don't recall if anyone told him
6 or nobody told him?

7 MR. FELD: The witness answered the question. He
8 didn't tell him.

9 THE COURT: You may ask did he hear anybody else.

10 Q Did anyone else tell Sibold to bring it to the back
11 room?

12 A Not to my recollection.

13 Q You were right there at that time, the three of you
14 together?

15 MR. FELD: Objection, repetitive.

16 Q What officer started to work to open the suitcase?

17 A Officer Badal, sir.

18 Q When did Officer Beavers help him?

19 A He did not.

20 Q At no time?

21 A No, sir.

22 Q Are you sure of that?

23 A To the best of my recollection, sir.

24 Q You were there, there were five of you there?

25 MR. FELD: Objection.

1
2 THE COURT: Why do you do that, Mr. McAlevy? Why
3 do you keep laboring there were five of them? I heard this
4 ten times and so have you. It could be some sort of a tic.
5 Don't do it any more. I am going to sustain these objections.

6 MR. MC ALEVY: All right, sir.

7 THE COURT: But it should not be necessary for these
8 questions to be so repetitious.

9 Q Did Beavers at any time help in opening the suitcase?

10 A No, sir.

11 Q Who supplied the paper clips?

12 A The paper clips? Mr. Sibold and Captain Blevins.

13 Q Who asked for the paper clips?

14 A Perhaps Bedal. I don't recall, sir.

15 Q They both supplied them?

16 A Sir?

17 Q Your testimony is they both supplied the clips?

18 A Yes, sir.

19 Q You then assisted Bedal in opening or unloading the
20 suitcase?

21 A Bedal had trouble with the second lock and I just,
22 to help him, I held the screwdriver because he manipulated the
23 paper clip?

24 Q So one time there the two police officers were
25 attempting to unlock the suitcase, is that right?

1
2 A Yes, sir.

3 Q Do you recall where Mr. Sibold was during this
4 time?

5 A He was standing there, sir.

6 Q About seven or eight feet?

7 A No, maybe a couple of three feet.

8 Q Are you sure of that?

9 A Yes, sir.

10 Q After the case was opened, how did you know it was
11 opened, sir?

12 A The lock mechanism clicked when the locks were
13 opened or the locking mechanism was opened.

14 Q And Mr. Sibold came over, placed the suitcase on
15 the ground?

16 A He picked it up and placed it on the ground.

17 Q Where were you and your fellow officers at that
18 time?

19 A We were just standing around the area.

20 Q Looking at the suitcase?

21 A After it was opened, yes, sir.

22 Q Before it was opened, before it was actually
23 opened, after it was unlocked? Do you understand my question?

24 A No, sir, I don't.

25 Q After it was unlocked by Officer Bedal, after the

clicks were made, is that when Sibild came over and put the suitcase on the floor?

A Yes, sir.

Q At that time were and your three fellow police officers standing around the suitcase?

A We were in the area, sir.

Q How far away?

A Probably three, four feet.

Q Did you have some interest at that time in what was inside the suitcase that was just unlocked?

A I looked at it, yes, sir.

Q Did you have any interest, were you interested in the contents of that bag?

A I wanted to see what was in it.

MR. SLOTNICK: I object to that as being covered and asked and answered.

THE COURT: Go ahead.

Q The other two officers were there also?

A Yes, sir.

Q About the same proximity to the case as you?

A Yes, sir.

Q Now, your testimony is that after Mr. Sibold opened it, it was partially covered, the contents of that suitcase?

A Yes, sir.

Ryan - cross

MR. FEYTELL: I object to that as asked and answered.

THE COURT: Sustained.

MR. MCALEVY: NO further questions.

THE COURT: Anything else?

MR. FELD: No, sir.

THE COURT: All right, officer, thank you.

(Witness excused.)

MR. FELD: We have no further witnesses on this matter, your Honor.

THE COURT: Anything else on this suppression question, gentlemen?

MR. FELD: No, your Honor. The only request that we would make is that we be given an opportunity to give you a memorandum of law concerning the question of whether this was a police search or a proper search.

THE COURT: Is that the only question you are going to be addressing it to?

MR. FELD: And the reasonableness of what took place.

THE COURT: Yes, I will take a memorandum on the reasonableness of the search from both sides.

How much time do you need?

MR. FELD: Could we have until the middle of next week, say Thursday?

THE COURT: Yes. The same for the defendants, Thursday,

1
2 that is October 4, I believe.

3 Memos by October 4th.

4 I take it we are going to continue with the defense
5 presentation of the tapes? Let us get those tapes set up
6 during the lunch recess, please.

7 MR SLOTNICK: We will do it, your Honor.

8 THE COURT: And to allow for that, let us suspend
9 now and come back at 2.15, but before we do that, let me
10 ask you is there any relevance to my concern beyond what I have
11 heard here of the Ohio suppression proceedings? Are the
12 particulars of the Ohio court pertinent to my concern here,
13 ought I to read it? Was there a written opinion? I don't
14 know any of that.

15 MR. FELD: I don't think there was a written opinion,
16 your Honor.

17 THE COURT: It was a motion to suppress denied?

18 MR. FELD: Yes.

19 THE COURT: Were there any findings of any kind?

20 MR. FELD: I don't know that.

21 MR. MC ALEVY: Judge, there is nothing in the record
22 to reflect that. I believe that there were supplemental briefs
23 filed after the argument, but as to written findings of fact
24 and conclusions of law, I have no knowledge of that.

25 MR. FELD: We will check on it and if there is some-

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2 thing, your Honor, we will furnish you and counsel copies of
3 it.

4 THE COURT: The other thing that occurs to me is
5 while we have done this in two installments I may or may not
6 be interested in any contentions that anybody wants to make
7 about what I should or should not infer as to the relationship,
8 if any, between Messrs. Dellacave and Capra on the one hand
9 and Middlebrook for the purpose of this suppression business
10 as it may affect the prior question, which was debated, the
11 question of standing here.

12 I assume that in Ohio, but I really don't know, it
13 was Middlebrook and others there moving to suppress?

14 MR. FELD: Mr. Morris, McSpaden and Middlebrook and
15 Ramos.

16 THE COURT: I don't know that it is material, it
17 may be, but none of the people here participated in that motion?

18 MR. FELD: That is correct.

19 THE COURT: Or in any effort to suppress. I don't
20 know what it means but I would like to hear about what you
21 say is in the evidence before me that I should infer and you may
22 also consider the question to which I also don't know the
23 answer, as to whether in some measure that topic may have been
24 opened through a trial of the merits of this case, if we reach
25 it, whether the Court might acquire further illumination on

1 the trial of the issues of guilt or innocence, which might
2 affect the suppression question one way or the other. It might
3 mean that a denial now if I should suppress, would later be
4 shown to be erroneous, should have been granted or vice versa,
5 though I don't know that the vice versa would work in practice.
6

7 MR. FIETELL: Your Honor is touching on collateral
8 estoppel doctrine --

9 THE COURT: I am not really touching on that and
10 you are not a party in that proceeding. I am not touching on
11 anything. I am raising questions and you just supply the
12 answers. I am trying to guide you to write a memo. I don't
13 want you to argue now.

14 If I am asking the wrong questions you explain to
15 me how they are the wrong questions. If they seem to be use-
16 ful questions, give me the answers to them.

17 MR. FEITELL: Very well.

18 THE COURT: 2.15.

19 (Luncheon recess taken until 2.15 o'clock.)
20
21
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25

AFTERNOON SESSION

2:40 pm

THE COURT: All right, where are we now?

MR. MC ALEVY: I believe the last conversation was just completed, a call that was listed in the log on December 13, 1971 at 1954 hours.

THE COURT: Right.

MR. MC ALEVY: Next call will be on December 14, 1971.

THE COURT: December 14?

MR. MC ALEVY: Yes, sir, a call listed at 1746.

THE COURT: All right.

MR. MC ALEVY: At least we think it is 1746.

MR. FEFFER: 1743.

THE COURT: Before that, I asked counsel to get together on these few cases where it was asserted that calls were not logged and it appeared to be some possible disagreement between Mr. Slotnick and Mr. Feffer about that.

What is the result of that?

MR. SLOTNICK: Your Honor, we have compiled a listing of it and I am awaiting for the technician to give me everything. We are listening to the original in my office and we will have a response by Tuesday.

THE COURT: You have compiled a list of all those

and the dates and times that you say were not logged?

MR. SLOTNICK: That is correct.

THE COURT: I will see this listing eventually and see whether you agree or not?

MR. SLOTNICK: Exactly.

THE COURT: I want to see what you agreed on because this seems to be something you can agree on without a further hearing about it. All right.

(Conversation played.)

THE CLERK: Two minutes 32 seconds.

MR. MCALEVY: The next call is on December 14 in the logs at 1902.

(Conversation played.)

THE CLERK: One minute eight seconds.

THE COURT: Was it cut off?

MR. FEFFER: Yes, your Honor, it sounded like it. Just one reference to the preceding call would be the guarded nature of the conversation, talking about being at the office anyone spots us talking at that place, this type of conversation and the government thinks this is prevalent throughout many of these calls.

MR. MCALEVY: The next conversation, sir, is on December 14, 1971, in the logs at 1850.

(Conversation played.)

2 THE CLERK: Fifty seconds.

3 MR. MC ALEVY: The next one is on December 14, 1971
4 and I believe it is 1247. I just can't read it from my logs.
5 It must be the 15th at 1247.

6 THE COURT: It must be the 15th. You just had three
7 calls on the 14th.

8 MR. MC ALEVY: I believe it is 1247, but it is
9 difficult to distinguish. It says male and I think it is
10 Frank.

11 THE COURT: He has it with asteriks. That looks like
12 1247 to me, too.

13 (Conversation played.)

14 THE CLERK: Forth-three seconds.

B3 15 MR. PEPPER: Your Honor, even though the call was
16 43 seconds, I think the point of cut off would probably come
17 when the two principal parties got on the phone and that was
18 substantially shorter. One party answered the phone and an-
19 other one got on the phone.

20 MR. MC ALEVY: The next one is the 15th of December
21 and I believe it is 1425, male to male.

22 THE COURT: I don't see that. Is it 1426?

23 MR. MC ALEVY: The one before that.

24 THE COURT: 141 I think.

25 MR. MC ALEVY: It is the one after Jimmy.

2 THE COURT: It looks like 1421.

3 MR. PEPPER: 1421.

4 MR. MC ALEVY: I will make it 1421.

5 (Conversation played.)

6 THE CLERK: I didn't time that one.

7 That was for information and you said don't do it
8 unless he is talking to someone.

9 THE COURT: That might be the 1411 call. From the
10 sound of it it was a Jimmy and a female, if that is the one
11 you want to play, and we will go back and hear it.

12 MR MC ALEVY: Again, it is illegible on mine. The
13 one that I played was the one we wanted to have played.

14 MR. PEPPER: That was 1430.

15 THE COURT: Play it again.

16 (Conversation re-played.)

17 THE CLERK: One minute two seconds.

18 MR. MC ALEVY: The next one is in the same date, on
19 the 15th and it is between Jimmy and an unknown male.

20 Apparently it is not going to be the one. I have
21 1427 down here. It is a call, probably the one after 1430
22 which I don't know what that would be.

23 MR. PEPPER: 1430.

24 (Conversation played.)

25 THE CLERK: One minute and 13 seconds.

1
2 MR. MC ALEVY: The next one is on December 15 at
3 1806.

4 (Conversation played.)

5 MR. MC ALEVY: Apparently that shot up to Jean
6 without a ring.

7 MR. SLOTNICK: If there is no notation on the
8 technician's report apparently something happened with our
9 machine. If there is nothing here we would assume it is our
10 machine that mal-functioned.

11 THE COURT: For the time being, where did that cut
12 off?

13 THE CLERK:: One minute 18 seconds.

14 THE COURT: You are presenting it and I am taking
15 your presentation. If for some reason I should revise this in
16 my notes, I expect you to let me know about it and agree on
17 it with the government as part of your Tuesday agenda.

18 That ends after one minute 18 seconds of conversation
19 for whatever it is worth. I don't know whether it is cut off
20 of not, but I will also, because that is the way it was pre-
21 sented to me now, mark it as being cut off and will give you
22 an incentive, Mr. McAlevy, to double check.

23 You may want to correct that so I will expect -p I
24 won't expect anything, that is the way my notes read now. I
25 would assume if there should be a change in the interest of

accuracy you can let me know.

MR. MC ALEVY: I went back a little bit in the conversation and I will try to stop at Jean's voice so we can get some time perhaps from the starting point with Jean.

THE COURT: All right.

(Conversation played.)

MR. MC ALEVY: That will be at the starting time for Jean's conversation listed at, I believe, 1808.

MR. FEFFER: Yes.

(Conversation played.)

THE CLERK: One minute 7 seconds.

MR. MC ALEVY: The next one I can't read on my log. I have it listed at 1815 with a question mark, allegedly a conversation between Steve and his wife Margaret. This would still be the 15th.

(Conversation played.)

THE CLERK: 38 seconds.

THE COURT: That sounded cut off.

MR. FEFFER: Yes. The log is 1812.

THE COURT: That sounds right to me. Is that agreed?

MR. MC ALEVY: Yes, a female.

THE COURT: This is a husband and wife conversation.

MR. MC ALEVY: Judge, I believe it was and they were discussing the previous phone call which is the boy Carmine,

about going to the movies the next day instead of going to school.

The next one would be on the 15th of December, again with one Freddie and a male.

MR. PEPPER: 1814.

(Conversation played.)

THE CLERK: Five minutes and 18 seconds.

MR. MC ALEVY: Turning now to December 16 at 1700 hours.

(Conversation played.)

THE CLERK: Fifty-five seconds.

MR. PEPPER: I thought there was more than one telephone call. It seemed like two, at least.

THE COURT: I don't think you can get plugged in to any number directly from information and I didn't hear any break between his speaking to information and then his speaking to some female who seemed to be at some Lionel establishment.

MR. MC ALEVY: Shall I play it back?

THE COURT: Yes, I am not going to accept that as one phone call unless you go back to the original tapes.

(Conversation re-played.)

MR. MC ALEVY: There was only one call in the log concerning this. The log goes from 1700 and 1705. It cer-

2 tainly wasn't a five minute phone call.

3 THE COURT: Let us not argue in the abstract. The
4 last point you made is no point at all. The numbers aren't
5 from one call to the beginning of the next.

6 (Conversation re-played.)

7 THE COURT: That is really all you have of that
8 call and you get a kind of cut off which is a break in your
9 tape and maybe in the original tape and then the other call
10 and in my notes I am going to count it as two calls totaling
11 approximately 55 to 60 seconds.

12 THE CLERK: The third one was 12 seconds.

13 THE COURT: We didn't complete the first one. If
14 you want to correct it, work with Mr. Feffer and I want you
15 to agree on what goes on the original tape and tell me about
16 it. And I will correct my notes. Let us proceed.

17 MR. MC ALEVY: The next call, your Honor, is on the
18 16th of December at 1920, a call between an unknown male and
19 and an unknown female, or Steve and Jean, with the Jersey
20 phone number.

21 THE COURT: But mine says in, unknown male, out
22 unknown female.

23 (Conversation played.)

24 THE CLERK: One minute 21 seconds.

25 MR. MC ALEVY: The next call is 1835 on the logs, sir.

(Conversation played.)

THE CLERK: Thirty seconds.

MR. MC ALEVY: The next one is the same date, at 1845, a call between Freddie and Jimmy as stated on the logs.

(Conversation played.)

THE CLERK: Forty-eight seconds.

MR. MC ALEVY: The next one is at December 16, 1971, at 1955 hours, a call between an unknown male and unknown female.

(Conversation played.)

THE CLERK: Two minutes.

MR. SLOTNICK: We would indicate that this was a husband and wife conversation.

MR. MC ALEVY: The next one is on December 16, 1971 at 2302 hours.

(Conversation played.)

THE CLERK: Fifty-seven seconds.

MR. MC ALEVY: The next one is December 16 at 2355 hours, Jimmy to an unknown female.

MR. SLOTNICK: Before this call, again. so the record is clear, it is out contention that even what appears as a 90 second rule by your Honor, --

THE COURT: Don't keep repeating it. I haven't pursued this in the sense that I have cut you off so just tell

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1
2 your contentions without arguing the call.

3
4 MR. SLOTNICK: My contention is when the police
5 were fully satisfied and it was obvious that this was a
6 Christmas tree deliverer they should have cut off and not
7 continued to listen on.

8 (Conversation played.)

9 THE CLERK: One minute 47 seconds.

10 MR. SLOTNICK: Again, that conversation, it was
11 apparent that should have been cut off. It appears not to be
12 a husband and wife conversation but a conversation innocuous,
13 not of an authorized subject and it is very apparent.

14 The male's voice seemed to be not deep or heavy.

15 MR. MC ALEVY: The next one is on the following day
16 at December 17th and I am not sure of the time but it is a
17 conversation between Sam and an unknown female. I think it
18 might be 1250 or 56 -- I am sorry, 1450 or 1456.

19 THE COURT: 1450.

20 (Conversation played.)

21 THE CLERK: Two minutes thirty seconds.

22 MR. MC ALEVY: The next one is on December 17,
23 1971 and it looks like 1505, your Honor. Sam and Alex.

24 (Conversation played.)

25 THE CLERK: Thirteen minutes 26 seconds.

THE COURT: Off the record.

(Discussion off the record.)

MR. SLOTNICK: Your Honor, I am informed there is at least an hour's worth of tape on this machine.

THE COURT: All right, let us do about another ten minutes and then we will quit.

MR. MC ALEVY: The next call is on December 17, set forth at 1828 in the log.

(Conversation played.)

THE CLERK: Three minutes 58 seconds.

MR. FEFFER: I would take issue with the timing. Obviously there was a pause and there was a time when no one was talking. In terms of time it might be very misleading. The actual conversation probably lasted no more than 30 seconds at the most.

THE COURT: Anybody disagree with that?

MR. FEITELL: Mr. Feffer said three minutes.

MR. FEFFER: I didn't say I timed it, the actual conversation.

THE COURT: Look, that is what I think too but let us just flip it back a little and get Beansie where he picked up the phone and we will time it and note it.

(Conversation replayed.)

THE CLERK: Fifty-nine seconds.

MR. FEFFER: I might add the reference to the

Christmas party is somewhat unusual in the sense Mr. Dellacava was on the phone appeared at the beginning not to even recognize the voice of the individual who called in and the government contention is that that could very well be a disguised term for other types of business, meetings of some type.

THE COURT: Anybody else have a comment?

MR. FEITELL: I read the business they are up to as something else.

THE COURT: Should I consult Mr. Slotnick about this?

MR. SLOTNICK: I pass.

THE COURT: Next.

MR. MC ALEVY: The next is on December 17 at 2018, Pete and a female.

(Conversation played.)

THE CLERK: Two minutes 53 seconds.

MR. SLOTNICK: My final comment for the day, recognizes the difference between speaking to a wife and a girl friend, right after the wife conversation, your Honor.

THE COURT: Do you have many more for December 17?

MR. MC ALEVY: Yes, quite a few.

THE COURT: We will stop here and we can pick up after that.

We are scheduled on October 2nd, is that right?
Please have the equipment set up before then so we can get

1
2 finished. I assume we can finish that morning?

3 MR. MC ALEVY: I would think so, Judge.

4 MR. SLOTNICK: I would think so, your Honor.

5 THE COURT: Does the government have any additional
6 items you propose to present?

7 MR. FEFFER: The government plans to play about a
8 half hour's worth of listening and that is it. We have the
9 transcripts of other calls that we will pass out to defense
10 counsel and look at those and that will substitute for playing
11 them again.

12 THE COURT: All right. We should finish all this
13 pre-trial hearing business on that day.

14 MR. FEITELL: Could we plan our calendars accordingly
15 that Wednesday is not a day we are here under any circum-
16 stances, is that right?

17 THE COURT: That is right.

18 THE CLERK: Room 318 Monday.

19 MR. SLOTNICK: I have an application with respect to
20 my client. Since his bail conditions were set by your Honor
21 he has been calling every day and signing in and we are thank-
22 ful for the right to be able to do that.

23 I would request that perhaps during the process of
24 these hearings he be allowed the luxury of staying home until
25 Tuesday, at which time he will re-appear.

MR. FEFFER: Yes, we consent to that, until Tuesday.

MR. MC ALEVY: I make the same application on behalf of Mr. Guarino.

MR. FEFFER: Consented to.

MR. FEITELL: And Dellacava.

MR. FEFFER: That is consented to, and also Jermain, he isn't here.

MR. SLOTNICK: Before the reporter leaves I may understood your Honor is under the impression that we only have an hour and a half on Tuesday, is that correct? Because we the balance of that, we have made another tape recording which continues up through the end of that and we had assumed we would then go into probably cause hearing with respect to the controversy of the warrant. Is that necessary?

THE COURT: I don't know whether it is necessary. It is only necessary if you want to present something.

MR. SLOTNICK: We would be prepared to present something.

THE COURT: Then we have a much longer day and plan accordingly.

MR. FEFFER: May I ask whether Mr. Slotnick is requesting the government to produce any witnesses?

MR. SLOTNICK: For the record, for the probable cause we are asking the government to produce George Eaton

AR 94

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2 together with his books and records, and also ask the govern-
3 ment to produce one gentleman by the name of Boady who I men-
4 tioned in my papers, if they know his whereabouts.

5 THE COURT: As to Eaton, that is controverting the
6 warrant. I will not order his production and I will not
7 allow you to proceed on that basis.

8 I have already indicated to you that as I understand
9 the law on this subject, if you are going to claim that the
10 affiant on a probable cause affidavit has committed perjury,
11 I am going to make you go first and make some colorable show-
12 ing initially as the basis for that claim in evidence, before
13 I allow you routinely, which is what you are attempting to do,
14 to put the officer on and try to show, in effect, by cross-
15 examining him, that his affidavit was false.

16 I believe that is the learning on this and subject to
17 that effect and in any event, I have now committed myself to
18 this view and I haven't seen anything from the defendants to
19 suggest that that view of the law is erroneous.

20 So if you want to go forward with your so-called
21 probable cause hearing, which is as I understand it a hearing
22 to show the underlying affidavits were perjurious, you are
23 going to have to go forward on a basis other than a demand
24 that the affiant be produced for you to show that.

B5 25 MR. FEFFER: May I respond? I think that George

AR 95 1

2 Eaton was subjected to numerous questions the two days that
3 he was on the stand with respect to many aspects of the affi-
4 davit, including the two telephone calls, the meetings, the
5 nature of the telephone calls, how he overheard the calls,
6 the surveillance where he saw these people, and I think there
7 was more than enough leeway to try to show the affidavit was
8 perjurious up to this point in time.

9 THE COURT: Whatever happened to this proposition
10 in this point in time is already on the record and if they are
11 now thinking they are going to go forward with a hearing to
12 controvert the warrant, what I have just stated constitutes my
13 view of that subject.

14 If they make a prima facie showing of ~~any~~ sort and
15 then claim a right to recall Detective Eaton I will cross that
16 bridge when I come to it. So I don't want to go over the
17 history of your review at this time, Mr. Feffer.

18 MR. SLOTNICK: Quickly and rather briefly, for the
19 record, your Honor, it is my intention to call George Eaton
20 as my witness to incorporate by reference whatever has been
21 asked of him in the past and certainly to make the record,
22 the cross-examination or direct, much more certain, I am
23 calling Eaton as my witness for the purpose of this hearing
24 and ask that he be produced.

25 THE COURT: No, I don't think this last reformula-

tion is going to help the least bit, because everybody could do just exactly that and then the rule that you can't do that to controvert a warrant would become a nullity and just because you say I am calling this officer as my own witness to show he is a liar, now that kind of convoluted thinking isn't a good way to administer the procedural law and I won't do it. So you know where I stand and don't repackage the positions. If they are correct, they don't need repackaging and if they are faulty they won't be improved by repackaging.

MR. SLOTNICK: My second request is that the government produce the original reliable confidential informant who we claim to be the gentleman by the name of Boady. We have no way of knowing where he is and we made attempts to find him and his whereabouts.

MR. FEFFER: I represent very quickly that I know of no one by the name of Boady and that I have checked through the police department and other means trying to locate this individual.

THE COURT: That is enough. I don't even think that there has been anything resembling a sufficient showing to require disclosure of the identity of the informant so I don't know whether Boady is or is not the informant.

MR. FEITELL: I want to join with Mr. Slotnick as I have to all of the proceedings and I join in all of the

AR 96A

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motions made here and his assertions in his papers on this.

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THE COURT: All right.

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(Adjournment taken to October 2nd, 1973 at ten a.m.

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in Room 318.)

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3 UNITED STATES OF AMERICA,

4 vs.

73 Cr. 460

5 JOHN CAPRA, et al.

6 Defendants.

7 New York, New York,
8 October 2, 1973, 10:00 a.m.
Room 318

9 (Hearing resumed.)

10 THE COURT: Are we ready to proceed with the
11 tapes?

12 MR. MC ALEVY: Judge, before we start, you
13 will recall that I stopped into chambers to see you on
14 Thursday, the 27th, in order to have a man called
15 Michael Cassese produced before the Court. At the time
16 you suggested I take the matter up with Mr. Feffer and I
17 have done that today and Mr. Feffer has no objection
18 to having the man writted down. The only problem we do
19 have is when can we produce this man for the purpose
20 of the hearing? He is up on Greenhaven and it will
21 probably take two days to get him out.

22 THE COURT: Let me see that writ again. When you
23 were in chambers it looked as though this was a somewhat
24 remote, prospective witness and I have before now had
25 situations where Mr. Feffer didn't object to using a day

1 rsg 2

1531

2 or two of the Court's hearing time for purposes which I
3 later discovered were a waste of the Court's hearing time.

4 So that particular reference to the so-called
5 Miranda Hearing with respect to that statement of
6 Mr. Capra while he was in the detention pen, all of which
7 seemed to me to be thoroughly unnecessary taking up of
8 evidence since the warnings didn't appear and any formulation
9 of the problem to have much to do with the admissibility
10 of the statement.

11 On that occasion, if I didn't make this
12 explicit, I didn't feel it was a service to the Court for
13 the Government to confer its consent to a hearing which
14 in the proper use of its adversary position the government
15 should have resisted as a waste of time.

16 MR. PEPPER: Your Honor, I did not consent to
17 a hearing in this matter. All I said is I would
18 facilitate bringing this man down here through a writting
19 him down so defense counsel could speak to him. I never
20 consented to a hearing, just to bring him down. That is
21 the only purpose.

22 THE COURT: So they could speak to him. I thought
23 we were going to have to wait for him to be a witness here.

24 In that event I certainly won't resist. Is the
25 form of this thing all right? It doesn't look like our usual

form of writ.

Mr. Feffer, will you go over it?

MR. FEFFER: Fine.

THE COURT: Mr. McAlevy, during the recess and when it is in proper form for me to sign, I will sign it.

MR. FEFFER: I can obviate it by getting our customary writ and not bothering your Honor with signing anything.

THE COURT: Fine. I think somebody needs to sign it but if you can get somebody else whose penmanship is better, I will be happy.

MR. MC ALEVY: The purpose that I want Mr. Cassese produced is not just to speak to him but in order to have the hearing with respect to the probable cause of detective Eaton's original affidavit of December 8.

THE COURT: That is what I understood. If you are planning to put on that man as a witness on that kind of showing, I don't think you ought to take up the Court's time with it. Maybe I misunderstood and maybe I will ask Mr. Feffer to look at it again.

We have him somewhat at a disadvantage because you and I were talking about this ex parte in chambers.

As I tried to recollect what we said when we met, and what I perceived when we met, it struck me that Mr. Cassese is somebody that the defendants here are saying might be the informer that Detective Eaton is talking about and might say that he didn't do whatever it is that Detective Eaton said he did.

But unless it is agreed that he is the informer that Detective Eaton is talking about, I don't know where that gets us. I might be also misstating what you hope to get.

MR. MC ALEVY: It is my understanding on last Wednesday when we asked to have Detective Eaton produced for a probable cause hearing, that was denied by the Court.

The only other way we can attack this affidavit of Detective Eaton's is by producing Mr. Cassese because the Court now has forbidden us to produce Detective Eaton with respect to this hearing.

THE COURT: I haven't forbidden you to produce anybody. Detective Eaton was on the stand a long time. I told you that unless you can go forward with something other than speculation in the way of evidence to suggest the basis for a claim that Detective Eaton had committed perjury in his probable cause affidavit, I am not going to try out that question of perjury or alleged question of

perjury and it does indeed happen all the time that such hoped for claims of perjury never reach the stage of being tryable, which is all right with me.

We can't try every question that somebody thinks he might like to try to try.

That is where we are at. Mr. Cassese supplies you with the kind of initial showing of perjury that warrants the controverting of the affidavit on that alleged ground, you are entitled to put him on. But I did not receive the impression from the affidavit in support of this writ that he really would serve that function.

If he doesn't, I don't see any reason for bringing him from the prison where he is lodged and to put him on the stand to extend these already rather extensive pre-trial suppression hearings.

MR. MC ALEVY: Judge, I think it is very important that we be permitted to have a probable cause hearing with respect to this warrant.

THE COURT: What do you expect to show from Mr. Cassese.

MR. MC ALEVY: To show Detective Eaton is in fact a liar.

THE COURT: No, what concretely do you expect to

1 rsg 6

2 show through Mr. Cassese?

3 MR. MC ALEVY: What is set forth in the
4 affidavit.

5 THE COURT: Tell it to me.

6 MR. MC ALEVY: That in fact Detective Eaton in
7 his affidavit stated that he had a reliable informant he
8 was not telling the truth. He never got this reliable --

9 THE COURT: How is Cassese going to show that?

10 MR. MC ALEVY: Because he was the one that was
11 arrested with Boady on April 21 and Boady was
12 arrested under the writ at that time and he continued having
13 a reliable informant and it is a direct contradiction.

14 THE COURT: Boady wasn't and Cassese couldn't
15 have been and you suggest that one of them had to be the
16 one Eaton was talking about?

17 MR. MC ALEVY: Absolutely.

18 THE COURT: Mr. Feffer, tell me about that.

19 MR. FEFFER: Your Honor, I am not going to
20 speculate as to the correctness of the statement made but
21 I don't understand what an arrest in April of 1971 under
22 any name has to do with the reliability of the informant.

23 What does the fact that two individuals were
24 arrested under any name in April have to do with telephone
25

1 rsg 7

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2 calls that were supposedly made by the confidential
3 informant six months later?

2/ 4 THE COURT: I don't know. What does it have to
5 do with it, Mr. McAlevy?

6 MR. SLOTNICK: Perhaps I can aid the Court.

7 THE COURT: No, you may not. I am not going to
8 have this up and down back and forth with a lot of people.

9 Do you feel Mr. McAlevy is unable to carry on
10 with the submission he started?

11 MR. SLOTNICK: I feel I have more knowledge than
12 Mr. McAlevy does with respect to the Boady-Cassese matter
13 and might be able to clear it up.

14 THE COURT: All right, go ahead. Sit down,
15 Mr. McAlevy.

16 MR. SLOTNICK: During the Sperling trial Mr.
17 Lavin, Assistant United States Attorney, made the statement
18 to Judge Pollack that either Mr. Michael Cassese or
19 Mr. Donald Boady was the informant of Detective Eaton.

20 Exact words at page 2564 of that trial
21 "One of those two persons is the informant."

22 Therefore, we have established from the government
23 that either the informant is Mr. Donald Boady or Mr. Michael
24 Cassese.

25 We have undertaken to cause an investigation. I had

1 rsg 8

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2 an investigator go up to speak to Mr. Michael Cassese and
3 he indicated several things.

4 Number one, that at the end of his case,
5 as a result of his arrest by Detective Eaton, he received
6 seven years imprisonment.

7 Number two, that he was not the informant and
8 it was an indication, as a result of all the facts in
9 evidence, that Donald Boady was actually the informer.

10 We then attempted to locate Mr. Boady. We made
11 a request of the Court that Mr. Boady be produced, if the
12 government knew where he was or actually that he be
13 produced.

14 The government indicated they did not know where
15 he was and the issue of prejudice as to a lack of notice
16 is something that we will discuss at a future time if your
17 Honor will allow me.

18 We have not been able to locate Boady.
19 Boady is the reliable confidential informant that Detective
20 Eaton testified about. He stated in his affidavit, and I
21 would ask that the record be clear when counsel and I have
22 been using it to indicate a probable cause hearing we are
23 actually moving to controvert the two warrants of
24 Diane's Bar which is in question at this time.

25 The first affidavit of the Diane's Bar indicates

1 rsg 9

2 that he is the reliable confidential informant and we have
3 reason to believe Boady was arrested in April by one
4 Detective Eaton. Prior to his arrest --

5 THE COURT: Arrested in April of what year?

6 MR. SLOTNICK: 1971, by Detective Eaton. That
7 prior to his arrest he had used a "cover name" with regard
8 to another investigation.

9 This occurred prior to the time that Boady was
10 a reliable or allegedly reliable confidential informant.

11 We have certain transcripts from a wiretap
12 indicating Mr. Boady did not use a cover name and that
13 Mr. Boady would have no reason to use a cover name and we
14 say that the affidavit smacks of rather strange
15 rhetoric with regard to Mr. Boady using a cover name prior
16 to his becoming an informant. That is point number one.

17 Point number two, we hope to establish
18 Mr. Boady as not the reliable confidential informant to
19 controvert the warrant and, number three, Mr. Boady is
20 not a reliable informer and that he was solely an informant.
21 We have established I think --

22 THE COURT: How is Mr. Cassese going to establish
23 these things? Why do we have to writ him down here?

24 MR. SLOTNICK: Mr. Cassese will say that he is
25

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2 not the informant and your Honor will make a decision as to
3 the credibility. If your Honor believes him there can be
4 only one other man who is the informant and that is Boady.

5 THE COURT: Then what?

6 MR. SLOTNICK: From there we would ask to be
7 able to put Detective Eaton on the witness stand to
8 explain. If your Honor will recollect during the
9 minimization hearing I was very careful and your Honor
10 indicated that I should not direct questions of the
11 controversion of the warrant and probable cause as we call
12 it. I did ask Detective Eaton some questions and got some
13 answers that there was an incorrect submission of the
14 warrant before Judge Birns.

15 Now, I agree with Your Honor that the law indicates
16 and your Honor said on one prior occasion that the law
17 indicates that if a Judge signs a warrant and unless there
18 is some showing there is something not within the face of
19 the warrant that the Judge did not know about we might
20 have a right to controvert the warrant. I take exception
21 with this, that I think we have a State Court Judge and
22 we might be able to look at the entire warrant on its face
23 but failing that, if your Honor disagrees with me and your
24 Honor does, I suggest the following:

25 Detective Eaton already testified to a conversation

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2 that he allegedly overheard from the Third Avenue tapes
3 of two conversations which are in evidence before this
4 Court and which I have proven during the minimization
5 hearing his statement in the affidavit is totally
6 incorrect.

7 For example, he testified and he stated in his
8 affidavit he heard a telephone call, a conversation on
9 December 11 at 12:50 p.m. during which Joseph Della Valle
10 spoke to another individual who responded to the
11 nickname Jimmy. That portion of the tape recording was
12 placed in evidence before this Court on the
13 minimization hearing.

14 That tape recording does not indicate that
15 Joseph Della Valle responded to the nickname Jimmy.

16 The second statement in the affidavit for
17 Diane's Bar, number one, the warrant that we attempted
18 to controvert is the following:

19 I also listened to a recording of a telephone
20 call and conversation made on December 12, 1971 at
21 approximately 3:20 p.m. during which Joseph Della Valle
22 spoke to another individual and answered to the nickname
23 Blacky.

24 That conversation is before this Court and
25 Joseph Della Valle was no part of that conversation, that

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was a conversation between a third party male, admitted by Detective Eaton and Joseph Della Valle's mother so we have two statements immediately to present to the Court that Detective Eaton's sworn affidavit is incorrect.

THE COURT: Is that for Diane's Bar number two?

MR. SLOTNICK: Number one.

THE COURT: Where did you get the transcripts that you say he swore falsely in part of the warrant?

MR. SLOTNICK: If your Honor looks at that page two of his affidavit for Diane's Bar number one, paragraph five, you will see the two statements and if your Honor would once again listen to the Third Avenue tapes, the section that we played and the logs I believe are in evidence.

THE COURT: The tapes that were gotten pursuant to the warrant?

MR. SLOTNICK: That is correct.

THE COURT: That is Diane's Bar number two. That is going to show he was lying when he swore to what he swore to in the warrant?

MR. SLOTNICK: That is a beginning.

THE COURT: Look, you are going far afield and it is very interesting. I want to ask Mr. Feffer, are you prepared now to take a position on whether Cassese was

3/

1 rsg 13

2 or was not the informant of Detective Eaton? Because
3 they want to bring Mr. Cassese and if he was not the
4 informant -- do you concede that?

5 MR. FEFFER: No, I do not. I'm not going to
6 concede anything.

7 THE COURT: You are not going to concede anything
8 but do you claim that he was the informer?

9 MR. FEFFER: I am not going to take a position
10 whether he is or not. It is totally unnecessary in the
11 light of what was said by counsel. Counsel has
12 represented to this Court on numerous occasions that they
13 know the identity of the informant and his name is
14 Boady.

15 Now, they have asked the government to produce
16 Boady and the government has represented that it has
17 no idea where Boady is. Under the circumstances of this
18 case, of the warrant, there is no justification for
19 compelling the disclosure of his name.

20 Under the case law, I think your Honor referred
21 to last Wednesday it is clear --

22 THE COURT: I can't see it, and that is all that
23 is really before me at this moment. We are trying to
24 listen to these interesting tapes and I can't see at this
25

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2 moment any need for calling Mr. Cassese away from state
3 prison to come here and say he is not the informant where
4 you are telling me he is not and all that is going to lead
5 to is your asking again for Mr. Boady and all that is
6 going to lead to is Mr. Feffer saying again that the
7 government does not know where Mr. Boady is and we are
8 back where we were.

9 I think I may assume for present purposes, whether
10 Mr. Feffer can see it or not along with the defendants,
11 that Mr. Cassese is not the informant and for the sake
12 of argument I will so assume.

13 And if and when you can get Mr. Boady here and
14 make an offer of proof as to what he will say, we will
15 consider whether to hear him. I don't see any reason
16 to get Mr. Cassese down here and I so rule.

17 MR. SLOTNICK: May I make two points for the
18 record.

19 Number one, I would say, and your Honor ruled
20 I have no right to and the government does not have to
21 produce an individual they do not have within their
22 custody and control. I further indicate that there is
23 another ground for controverting the warrant.

24 The informant who started the entire chain of
25 probable cause throughout all of this grandiose wiretapping

proposition and bugging proposition is not available.

The defendants are prejudiced by his lack of availability. That may also stem from the fact that no notice was served on them as I have indicated which is another argument for another time when your Honor wishes to hear that.

But what I am saying is there was an obligation on the government to preserve him and his whereabouts so that defendants could have him available for the purposes of the motion to controvert.

THE COURT: They preserved Detective Eaton. The government does not have to preserve all kinds of things to give to Defendants the extraordinary and usually unavailable opportunity to controvert a warrant. You have to start that and you are telling me that Boady would show that Eaton was lying. You ought to know that from having spoken to Boady. Do you have an affidavit or something. You don't know where he is.

I'm not going to let you rear back and undertake through the affiant Eaton to show Eaton is lying because that brings us back to our first point of disagreement on that subject of when and how people may controvert a warrant.

Make your next point.

1
2 MR. SLOTNICK: That I do know or at least it is
3 my belief that I will be able to show through Boady
4 as a result of my conversations with a third party who
5 is not available, who will not testify.

6 In other words, your Honor will reflect there
7 is another individual involved in the warrant who allegedly
8 called, who had informed my investigator that he never
9 spoke to or never knew a gentleman named Boady. And he
10 will not come and testify.

11 THE COURT: Don't you know how to write a
12 subpoena?

13 MR. SLOTNICK: He has a privilege under the
14 Fifth Amendment which it has been indicated he would
15 invoke.

16 THE COURT: Well, that is as it may be. What kind
17 of record that makes is up to you and some other Court
18 to judge. To me it doesn't make a very big record nor
19 does it signify anything I am supposed to do but you have
20 now presented your thoughts on the record and they are
21 here.

22 MR. SLOTNICK: One last point, your Honor.
23 In further indicating that whenever we have made as your
24 Honor suggested a prima facie showing for the controversion
25 of the warrant, the fact is that during the course of the

1 rsg 17

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2 taping of the Third Avenue, Della Valle home and Diane's Bar,
3 Detective Eaton did admit there was at least one occasion
4 when Joseph Della Valle's voice was allegedly heard in the
5 bar and he was at home speaking on the phone at the same
6 time. These conversations appear in the second warrant
7 as separate and independent conversations.

8 Based upon this I think we made a prima facie
9 showing and asked the Court to allow us to pursue this
10 further by putting Detective Eaton on the stand to go
11 forward with him. As I have indicated to the Court I
12 am forced to call him as a witness, hostile as he might
13 be and my application is that the Court allow us to
14 controvert the warrant of Diane's Bar 1 and 2 by calling
15 Detective Eaton to the witness stand.

16 THE COURT: As to things that Detective Eaton
17 may or may not have admitted, I wouldn't want to rely on
18 either my memory or your statement of them for 100 per cent
19 accuracy. They are whatever they are and your record is
20 what it is and we will now proceed with the completion
21 of these conversations that the defendants have been in the
22 process of playing.

23 MR. SLOTHICK: Do I take it that my application
24 is denied, your Honor?

25 THE COURT: Yes.

1 rsg 18

2 MR. PEPPER: I would like to make one point
3 on the record. Mr. Slotnick said there is a third party
4 who is referred to and that is undoubtedly Della Valle himself,
5 Joseph Della Valle, and I think it has been told to me
6 by counsel, Mr. Slotnick does represent Della Valle and
7 he was available and could be subpoenaed. He represents
8 him in another matter.

9 MR. SLOTNICK: That is correct, your Honor.
10 Mr. Della Valle is available and can be subpoenaed and
11 it is my information if subpoenaed he would take the
12 Fifth Amendment and I think he would probably take it
13 and, as a result of that, we would waste a lot of the
14 Court's time.

15 THE COURT: If he would take the Fifth
16 Amendment and if you are his lawyer I question the
17 propriety of spreading on my record things that you say he
18 might say that you feel as a lawyer would be incriminating.

19 MR. SLOTNICK: I am not taking that position
20 as his lawyer. I represent him in a state matter.

21 THE COURT: Wherever you represent him, I feel
22 very strongly, Mr. Slotnick, that whether you are his
23 lawyer or not, you can't have it both ways. You can't
24 stand up here and make a record to use your expression of
25 useful things he would say, if he took the witness stand,

1 rsg 19

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2 which he is not going to say because he is protected
3 against saying them by the Fifth Amendment to the
4 United States Constitution.

5/ 5 Whether you are his lawyer or not, it seems to
6 be a very dubious way to make a record, to assert as facts
7 things that the witness won't say one way or another
8 because of his Fifth Amendment privilege. I regard
9 them as being less than worthless.

10 MR. SLOTNICK: I am indicating that is why we
11 want Boady.

12 THE COURT: I understand what you are indicating,
13 Mr. Slotnick. I think we ought to stop this conversation
14 right now. I think we have heard enough. Let us proceed
15 with these tapes.

16 MR. FEITELL: The next conversation is logged
17 at 2320 on December 17, 1971.

18 THE COURT: Wait a second. Am I correct, so I
19 am sure of my notes, that the last one we had is
20 December 17 at 2018?

21 MR. FEITELL: That is correct.

22 THE COURT: Now, you say you are giving us one
23 at what time?

24 MR. FEITELL: 2320, the same day.

25 (Conversation played.)

THE CLERK: Three minutes 17 seconds.

MR. FEITELL: While this call is indicated to have occurred at 2320, one of the participants indicates that it was three o'clock which might say something as to some error in the logs.

MR. PEPPER: This last call you say?

MR. FEITELL: Yes. The call just completed.

The next call is December 17, 1971. However, we can't tell from the log what time it is. It is noted as a call between Edie and Denise.

THE COURT: How do you know it is the 17th, Mr. Feitell?

MR. FEITELL: That is the surmise of the person who put this together. Apparently it is very closely connected on the tapes given us in point of time to the previous call. As such it would indicate it occurred on the same day.

THE COURT: I can't take in evidence your account of somebody's surmise. There are some rules that forbid that.

If you want to make anything you will have to put it in in the appropriate way otherwise I don't think you have identified this call as to its time and it doesn't mean I won't hear it if it is on the tape the

1 rsg 21

2 government gave you.

3 MR. FEITELL: I am sure it is on this log.
4 That is page 24 which is the log number.

5 THE COURT: That gets into December 18 on mine.

6 MR. FEFFER: It is December 18.

7 THE COURT: Maybe that is your problem,
8 Mr. Feitell. What time is this call supposed to be?

9 MR. FEITELL: 3:30 is the time mentioned in the
10 call.

11 THE COURT: The one you are about to play.

12 MR. FEITELL: Yes.

13 THE COURT: There is one at 1532 on the log of
14 December 18 which, as I recall would be 3:32. I don't
15 know whether it is that or not but you go ahead.

16 You have somebody in the courtroom who prepared
17 a log. Maybe he could advise me.

18 (Discussion off the record.)

19 THE COURT: Now, I don't know what you want to do
20 about that, Mr. Feitell, but I leave that to you to handle.

21 MR. FEITELL: I know what the content of the
22 call is and maybe counsel will agree we have a female on
23 one call and a female indicates the person being called for
24 is sleeping and talks about waking him up. He is supposed
25 to meet me. The time 3:30 is mentioned and someone says

1 rsg 22

1551

2 I'll be there at a quarter after 4:00.

3 THE COURT: If that brings to mind anything
4 that the government has in front of it perhaps they have
5 better written logs and we may be able to zero in on the
6 call.

7 MR. FEFFER: The only thing is the time
8 designated in the previous phone call was incorrect and in
9 fact the telephone call which they just played took place
10 earlier in the afternoon, at approximately -- for example
11 the call Jimmy, the person speaking in the conversation is
12 a female at 1327 in the afternoon on the 17th. That is
13 one possibility but we can attempt to listen to these
14 calls and tell by the log the telephone number actually
15 dialed.

16 THE COURT: Let us play the next call and you can
17 argue about it or adduce evidence about this as to what
18 is or isn't possible. Someday these hearings are going to
19 have to end.

20 MR. FEITELL: Are you instructing me to play this
21 call now?

22 THE COURT: I am not instructing you, I am
23 allowing you to do it if you wish to. You can either
24 skip it or play it.

25 MR. FEITELL: I want to play it. I say it is

1 rsg 23

1552

2 a December 17 call and at this moment I don't know the
3 time of it.

4 THE COURT: Go ahead.

5 (Conversation played.)

6 THE CLERK: Three minutes 28 seconds.

7 MR. PEPPER: My only comment would be that I
8 think the timing should have started at the time the
9 male and female were talking instead of the long waiting
10 period when the officer didn't know who was on the phone.
11 I think it is inaccurate to time it from the beginning.

12 THE COURT: I have noted there was a wait.
13 That happened with some of the calls and that may be a
14 factor for me to consider. I don't think we ought to get
15 excessively refined at this point.

16 MR. FEITELL: I also notice there was some
17 conversation between the parties originally on the call
18 before and somebody else took it over.

19 Again, on the next call we are unable to
20 determine from the face of the log what time it is
21 because of the illegibility of the log.

22 THE COURT: All right.

23 (Conversation played.)

24 THE CLERK: Five seconds.

25 MR. FEITELL: The next call is also illegible in

1 rsg 24

1553

2 the logs.

3 THE COURT: Will you tell me what you want me to
4 make of a five-second call? Why did you play it?

5 MR. FEITELL: If I knew it was going to be five
6 seconds, I probably wouldn't have played it.

7 MR. FEFFER: Can we know what page we are
8 working from?

9 MR. FEITELL: Page 24.

10 THE COURT: Yes, you may continue but all of my
11 page 24 relates to December 18. Are we working from the
12 same document? You say you are talking about December 17.

13 MR. FEITELL: I think the surmise of the person
14 who prepared the log which is based upon the illegible
15 log that it was the 17th, although it is indicated that
16 the day in question is a Saturday and probably someone
17 looked at a calendar it probably would be found to be the
18 18th.

19 THE COURT: The 18th was a Saturday. Therefore,
20 let us start here and say that you are playing calls on
21 December 18.

22 MR. FEITELL: Yes, this would have been the 18th.

23 THE COURT: The prior one too?

24 MR. FEITELL: I am not clear on that myself, Judge,
25 either the 17th or the 18th.

1 rsg 25

1554

2 THE COURT: All right. Now it is clear that we
3 are on the 18th. Is that right?

4 MR. FEITELL: Yes.

5 (Conversation played.)

6 THE CLERK: Four minutes and five seconds.

7 MR. FEITELL: Again, the log is illegible in
8 connection with a call between two females. We take it to
9 be the 18th, the same day.

10 (Conversation played.)

11 THE CLERK: One minute 22 seconds.

12 MR. FEITELL: The next call is on December 18, 1971
13 at 1727.

14 MR. FEFFER: Your Honor, 28.

15 (Conversation played.)

16 THE CLERK: 46 seconds.

17 MR. FEITELL: The next call is on December 18,
18 1971 at 2000 hours.

19 (Conversation played.)

20 MR. FEFFER: That was cut off.

21 MR. FEITELL: It sounded like two calls on one.

22 MR. FEFFER: No, it was cut off.

23 THE CLERK: 30 seconds at the cut-off, if it is
24 a cut-off.

25 THE COURT: Was this call ever completed?

2 MR. FEITELL: I will have to go further to see
3 if it was.

4 THE COURT: If you go further you are on another
5 call. I mean the prior one, before the ring. Maybe I
6 misunderstood.

7 Anyhow, 30 seconds for whatever it is worth.

8 MR. FEITELL: Bear with me for a moment.

9 MR. PEPPER: I also don't believe they have
10 pinpointed for the record the conversation from the log.
11 It doesn't appear that way.

12 THE COURT: What do you propose I do about it?

13 MR. PEPPER: It is almost an impossible task
14 from your point of view but I don't believe they are
15 pinpointing the conversation from the logs.

16 THE COURT: Unlike the Marines the impossible
17 we don't do here.

18 MR. FEITELL: I am advised we are now on
19 page 25 on the date of December 18, 1971, Saturday,
20 a call which is indicated at 0047 hours, slightly below
21 the middle of the page.

22 THE COURT: Will you wait just a second,
23 please? You say we are on which date?

24 MR. FEITELL: December 18.

25 THE COURT: If we are on 00 something, it seems

1 rsg 27

1556

2 to me we must have reached December 19.

3 MR. FEITELL: I would be inclined to agree with
4 you but the log is not so marked.

5 But if you will look you will see 2312 and then
6 we pass the midnight hour and the recorder who was
7 making this transcript, the log, didn't indicate the
8 beginning of a new day.

9 THE COURT: Right. In fact, December 19 is
10 shown down below but can we agree that where we start
11 at 0012 we are on December 19, Mr. Feffer?

12 MR. FEFFER: That is correct, your Honor.

13 THE COURT: You are playing which one?

14 MR. FEITELL: 0047, the next to the last call
15 for that day's work.

16 (Conversation played.)

17 THE CLERK: Two minutes 17 seconds.

18 MR. FEITELL: Now, it has been indicated to me
19 the call we just heard was a call of December 18, 1971
20 at 2000 hours, which was the call we had thought we
21 had just played before this one. That short call which
22 appeared to be cut off and runs over into another call
23 was leading up to this 2000.

24 MR. FEFFER: Obviously it was a call made and
25 cut off and they played it.

THE COURT: Are they supposed to unplay it?
You don't rely on a short call?

MR. FEFFER: We do, your Honor.

MR. FEITELL: I don't agree with counsel it was
cut off.

THE COURT: You don't agree that the one you are
not relying on was cut off?

MR. FEITELL: Yes.

THE COURT: That seems important.

MR. FEITELL: Now we come to 0047 hours on the
early morning of December 19, which is carried under the
December 18 heading, if that is plain.

THE COURT: Wait a second.

MR. FEFFER: Perhaps the call at 2000 hours,
the call appeared in the log incoming male out female,
that is obviously two females, the one just played.

MR. FEITELL: Two females were on this call.

MR. FEFFER: That is correct.

THE COURT: But if that is so, Mr. Feffer, it
wouldn't have been 2000 on the log.

MR. MC ALEVY: I think a male answered the phone
first, your Honor.

MR. FEFFER: That was a call at 2130 marked
Ann Denise.

THE COURT: Whatever it is it is a two-minute and 17-second call between two females on December 18 unless the government can show otherwise at some point.

Now, we are on December 19?

MR. FEITELL: Yes at 0047 hours.

(Conversation played.)

THE CLERK: One minute 22 seconds.

MR. FEITELL: The next call is December 19, 1971 at 2008 hours. That would be page 26 of the log.

(Conversation played.)

THE CLERK: 18 minutes 40 seconds.

MR. FEITELL: I might indicate to the Court the log on the next call is supposed to be at 2020 hours which would indicate that the call we just played was but 12 minutes so that apparently the person preparing the log was mistaken in his times.

The next call in the log is designated at 2020 hours on December 19, 1971.

(Conversation played.)

THE CLERK: Two minutes 10 seconds.

MR. FEITELL: We will need a few minutes to change tapes.

THE COURT: All right, we will take a short recess, about five minutes.

1 rsg 30

1559

2 MR. FEFFER: That call appeared to be cut.

3 THE COURT: Yes, all right.

4 (Recess.)

5 (Defendant's Exhibit S marked for identification.)

6 MR. SLOTNICK: Your Honor, we will indicate to
7 the Court that Exhibit P for identification has just
8 been removed and ask it be placed in evidence.

9 THE COURT: Being the tape from which you have
10 been playing?

11 MR. SLOTNICK: I withdraw the offer, your Honor.

12 MR. FEITELL: Now we are playing from Exhibit S
13 for identification and the next call is December 20, 1971
14 and we go to 2112 hours. That is on a Monday and this
15 is on page 32 of the logs.

16 (Conversation played.)

17 THE CLERK: Seven minutes and 53 seconds.

18 MR. FEITELL: That is a call between Steve
19 Della Cava and a friend, listed as Beansy on the logs.

20 MR. FEFFER: The government says this is another
21 series of telephone calls between Della Cava and this
22 woman Jean. He gives an indication he may be going
23 uptown which would be significant in terms of possible
24 surveillance.

25 I think it has to be considered in line with the

1 rsg 31

1560

2 other conversations that he had with this woman and not
3 just by itself. But this time the officers clearly
4 identified Beansy and Jean. I think I have said some
5 things with respect to other calls.
6

7 MR. SLOTNICK: My comment would be at this
8 time the police officers know that Beansy and Steve is
9 not Joseph Della Valle and that every overheard and
10 listening to at this time becomes an illegal overheard
11 and had no right to listen to him talking knowing they
12 were not armed with a warrant authorizing interception
13 of the individual or individuals they were listening to.
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2 THE COURT: I will leave the legal aspects of this
3 to a little later. If you want to respond to what
4 Mr. Slotnick said?

5 MR. FEFFER: No, your Honor, I will wait until the
6 end because I will have to explain the business of
7 listening to Della Cave for as long as the agents did
8 without having a warrant explicitly authorizing such
9 eavesdropping.

10 THE COURT: I will take it that will be one of
11 your big problems and maybe when we get through listening
12 I will hear you.

13 MR. FEITELL: The next call is on December 20,
14 1971 at 2145 hours.

15 (Conversation played.)

16 THE CLERK: Three minutes and three seconds.

17 MR. FEITELL: The log indicates that is a call
18 with Jimmy the cook to his girlfriend, also listed as
19 not pertinent in the logs.

20 THE COURT: Mr. Feffer, would you like to make
21 an argument and can you tell me why any reasonable police
22 officers would listen so long to that kind of conversation?

23 MR. FEFFER: The only possible explanation I
24 have again is just listening to the call for the first
25 time, that at the beginning of the conversation -- let me

1 rsg 33

2 make sure of this.

3 Talking about moving some things and taking some
4 things over and she is very upset and makes reference about
5 be careful and be careful and in fact ends the conversation
6 with be careful and someone listening to this conversation
7 and hearing her tone of voice with respect to this moving
8 of something, could expect it had something to do with
9 narcotics.

10 THE COURT: Isn't it perfectly clear both of them
11 were outside of any scope of any order these officers had?

12 MR. FEFFER: At this point, your Honor, I would
13 have to say that the male and female -- based on using
14 hindsight clearly both are not mentioned or named in the
15 order, yes.

16 However, I can't indicate that the officer who
17 was listening at that time -- it does not appear to be
18 George Eaton from the handwriting -- recognized the voice
19 of the male making the telephone call going out.

20 MR. FEITELL: The voice was recognized because
21 his name is indicated, Jimmy the cook. It is indicated
22 there and to answer counsel's comment that this tape
23 repeatedly included the admonition to be careful, I
24 disagree with counsel and leave that to the Court to
25 determine. As a matter of fact, the woman's concern is very

2 obvious, she was concerned about a personal feminine
3 matter quite obviously.

4 The next call is December 21, 1971 at 2315.

5 (Conversation played.)

6 THE CLERK: One minute 36 seconds.

7 MR. FEITELL: That call, I am sorry, was
8 December 21, 1971 at 12:15 on page 34 of the log.

9 MR. FEFFER: May I add one possible reason for
10 the last conversation you asked me to comment on?

11 THE COURT: Yes.

12 MR. FEFFER: I think it is apparent this
13 fellow Jimmy the cook is obviously in Diane's Bar and this
14 really does lead directly to the point I wanted to make
15 before with respect to the Bynum case where they had a
16 babysitter who was frequently at the household and had
17 numerous conversations of hers which were intercepted,
18 and, in fact, that was the crucial point on appeal.

19 The Court of Appeals indicated that while such
20 conversations obviously began with teenage trivia, that
21 the people who were monitoring those calls could not
22 determine ahead of time when they would become relevant,
23 but, more important, when this individual who was
24 constantly in the household might give them valuable
25 intelligence in terms of the whereabouts of Bynum or messages

1 rsg 35

1564

2 that came in and out.

3 I think that this fellow Jimmy is in a very
4 similar situation, constantly in the establishment.
5 He does answer and has referred to Beansy and he could be --
6 I can't say this with hindsight, but numerous of his
7 conversations have been reported and picked up.

8 THE COURT: Is there a significant difference
9 between this order and the Bynum order?

10 The opinion seems to indicate an order to tap a
11 phone not confined to any particular person whereas here
12 whether it made sense or not, the order the Judge issued
13 was an order to tap the conversations on that phone of a
14 named person.

15 MR. PEPPER: Nevertheless besides the scope of the
16 order here they are listening to a babysitter, a teenage
17 girl who herself was not talking narcotics and there is
18 no question about it.

19 Not discussing anything with narcotics. However,
20 they indicate because of her position in the household --

21 THE COURT: I understand what you said and it
22 doesn't get too much clearer when you say it twice and
23 in turn I ask you the question of the difference in terms of
24 the order that may refer to listening to one phone rather
25

1 rsg 36

2 than listening to a certain phone. If that order said they
3 listened to Bynum perhaps you would have a different
4 case in justifying the listening to other conversations
5 of the babysitter. I am not saying you would but it is
6 something you would have to address yourself to.
7

8 MR. FEITELL: In answer to Mr. Feffer, may I be
9 heard? Mr. Feffer is overlooking the fact that this is an
10 outgoing call made by Jimmy, not an incoming call where
11 somebody was asking for a location or the whereabouts of
12 another person. It would seem to deflate his argument.

13 MR. FEFFER: I am referring to the whole series
14 of calls.

15 MR. FEITELL: You predicated your remarks by
16 referring to the last call.

17 MR. FEFFER: I made it clear these calls have
18 to be considered in the context of the whole series of
19 calls and not just one isolated call.

20 MR. FEITELL: Additionally the Bynum point is
21 that the phone in question is in a home given over entirely
22 to the drug trade. The phone in our case here is
23 obviously a public telephone.

24 The next call is December 21, 1971 at 1310 hours.

25 (Conversation played.)

THE CLERK: 53 seconds.

1 rsg 37

1566

2 MR. FEITELL: The next call is December 21, 1971
3 at approximately 2005 hours and I am advised that this
4 call does not appear in the logs.

5 (Conversation played.)

6 THE CLERK: 58 seconds.

7 MR. FEITELL: That again is Jimmy the cook although--
8 to a child -- although there is no indication appearing in
9 the logs.

10 MR. FEPPER: The indication in the logs at
11 2005 is out male in female.

12 MR. FEITELL: The next call is December 21, 1971
13 at 2006 hours.

14 (Conversation played.)

15 THE CLERK: One minute eight seconds.

16 MR. FEITELL: The next call is December 21, 1971
17 at 2040 hours.

18 (Conversation played.)

19 THE CLERK: Five minutes and 15 seconds.

20 MR. FEPPER: The only thing, I think obviously
21 in that particular conversation the telephone call could
22 have been cut off at an earlier time and was cut off at
23 a point of five minutes and 15 seconds and I think with
24 hindsight it could have been cut off earlier. But the only
25 point is that there is not going to be perfection in execution.

1 rsq 38

2 The word is not elimination but minimization. Obviously
3 calls with get through that don't come close to the
4 standards that we think they should in looking at this in
5 hindsight.

6 MR. FEITELL: That is one call which does not
7 and cutting that call was meaningless at that point.

8 The next call we are going to have is at 2050
9 hours on December 21, 1971.

10 (Conversation played.)

11 THE CLERK: 14 seconds.

12 MR. PEPPER: I also want to add with respect to
13 the last telephone call, this is something in addition,
14 when you take a series of calls out of sequence like this
15 it does give a degree of artificiality to say the list.

16 For example, the call at 2040, the last
17 telephone call, immediately followed a telephone call,
18 at least continues it in the log and I am not sure which
19 call it is and it is marked EP and there is a star next
20 to it and is the voice of Della Cava.

21 I think that is one factor when you have the
22 monitoring officer listen and he hears a conversation
23 with Della Cava, that he probably is going to take more
24 time before cutting off the next conversation.

25 I am not saying that he should have waited five

1 rsg 39

2 minutes but it is just a factor to be taken into account
3 by the Court that these calls are not coming in the manner
4 in which they came when the monitoring officer was there
5 but are artificially picked by Defense counsel and played
6 in that sequence.

7 THE COURT: Are you saying really that the officer
8 from listening to an EP conversation therefore was in a
9 state of kind of exhaustion when he listened in on this
10 other thing?

11 MR. FEFFER: That isn't my point but if you hear
12 a pertinent conversation then happen to listen to a
13 conversation that follows immediately thereafter
14 psychologically you are going to listen longer. I'm not
15 saying five minutes was a good standard but it is a factor
16 to take into consideration with the person at the plant.

17 MR. FEITELL: Those calls weren't back to back
18 anyway in terms of time because one call was at 2027
19 and the next call was at 2040. That is a five-minute plus
20 call so there is a 13-minute gap there in calls.

21 THE COURT: 2030 is when it started.

22 MR. FEFFER: In the log it follows as the
23 next telephone call, that is all I said.

24 MR. FEITELL: The next call is 2115 on
25 December 21, 1971.

1 rsg 40

2 Before we start that, this is a short call which
3 seemed to be tagged on there on the tape because the person
4 who made this tape as we all perceived the call that we were
5 focusing on and it ran into the next call so that we don't
6 know where it ended.

7 (Conversation played.)

8 THE CLERK: Two minutes 25 seconds.

9 MR. FEITELL: The next call is at 2215 hours
10 on December 21, 1971.

11 (Conversation played.)

12 THE CLERK: Five minutes and seven seconds.

13 MR. FEITELL: The next call is 2240 hours on
14 December 21.

15 (Conversation played.)

16 THE CLERK: One minute 34 seconds.

17 MR. FEITELL: That is a continuation of the
18 previous call which I thought had terminated or was cut
19 at five minutes.

20 THE COURT: Is that agreed?

21 MR. FEITELL: It sounds like it is a continuation
22 of the previous call.

23 THE COURT: Together with the previous call
24 about six minutes and 41 seconds.

25 MR. FEITELL: The next is at 2230 hours on

1 rsg 41

1570

2 December 21, 1971.

3 (Conversation played.)

4 THE CLERK: Two minutes 54 seconds.

5 MR. FEITELL: That is listed as a Beansy call in
6 the log with a male.

7 The next call is December 21, 1971.

8 MR. FEFFER: Is there some contention it was
9 not Beansy on the phone or is that just a reference?

10 MR. FEITELL: I am noting that for the record.
11 December 21, 1971 at 0021 hours. It is page 37
12 of the log and it is a carry-over into the early morning.

13 THE COURT: Can we call it December 22 for my
14 notes?

15 MR. FEFFER: Yes.

16 THE COURT: What time?

17 MR. FEITELL: 0021.

18 (Conversation played.)

19 THE CLERK: Four minutes 53 seconds.

20 THE COURT: How much more do you have,
21 Mr. Feitell?

22 MR. FEITELL: Approximately another two and a half
23 hours on the reel.

24 THE COURT: What do you hope to accomplish by
25 that? I have heard 87 telephone conversations now according

1 rsg 42

2 to my count.

3 MR. FEITELL: We would represent to your Honor
4 that the balance of the calls that we intend to play are
5 of the same variety and show the same defects in terms of
6 duration and relevance or irrelevance to the case.

7 THE COURT: All right. I am saying to you I
8 would like you and if you like Mr. Feffer can listen with
9 you and together you may give the following: The date
10 and time of each conversation on your tape, the
11 participants and the length of the conversation.

12 You may also indicate how it is marked in the
13 log or agree on the pertinent or non-pertinent and
14 as much as I enjoy these lovers' quarrels and so on I
15 think I have heard enough of them so that I don't need to
16 hear anymore.

17 If there are other things that you believe
18 should be included on your list to categorize these
19 calls or make the points that you wish to make, tell me
20 right now what you think they ought to be and I will
21 probably agree they should be included.

22 What other things do you want to show,
23 Mr. Feitell?

24 MR. FEITELL: That is all.

25 THE COURT: Is that it, Mr. Feffer? Do you think

1 rsg 43

1572

2 any other things should be shown?

3 MR. PEPPER: I can't think of anything else,
4 your Honor.

5 THE COURT: Mr. Slotnick?

6 MR. SLOTNICK: Specifically with regards to
7 Mr. Capra, your Honor, I made a point early about an
8 illegal overheard and I express it now. There is a lot of
9 testimony about December 23. Mr. Capra is first heard in
10 conversation as to him we suggest to the Court and there
11 cannot --

12 THE COURT: I don't want any argument. What I
13 am trying to organize -- I suppose I heard that
14 conversation, haven't I?

15 MR. SLOTNICK: Yes, you have.

16 THE COURT: It is useful to me if we take
17 one suggestion at a time. Is there anything you want to
18 list of these remaining calls on your tapes, your
19 Exhibit S?

20 Hearing nothing else from either side I take it
21 that will be sufficient to make whatever evidentiary
22 showing the defendants are proposing to make through this
23 device.

24 MR. SLOTNICK: We have something left on it,
25 your Honor and that is should the list prepared indicate the

1 rsg 44

2 calls that are not logged on the logs and are not on the
3 tapes and the differences? We spent most of yesterday
4 attempting to do what we could. Would you like that on the
5 report?

6 THE COURT: If it can be done through the medium
7 of a report I would prefer it.

8 It is lunchtime now, pull your thoughts together
9 and come back and we will finish this proceeding this
10 afternoon. I trust we can.

11 We will return at 2:15.

12 (Luncheon recess taken until 2:15 p.m.)
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2 AFTERNOON SESSION

3 2:15 p.m.

4 THE COURT: Let me say all of us, and not the
5 least I have been slightly casual in these pretrial hearing
6 days about starting time but with so many defendants and
7 lawyers and so on and a jury, if and when we go to trial
8 let us all resolve, including me, to be more punctilious
9 about that.

10 You are about to say something, Mr. Feffer?

11 MR. FEFFER: I was going to say we have one
12 tape of about 15 minutes at most.

13 THE COURT: Which you want me to hear now?

14 MR. FEFFER: Yes.

15 THE COURT: All right, go ahead.

16 THE COURT: What we are doing is we are taking,
17 I believe it is the first 15 entries that you see on
18 December 9, 1971, the first day of the monitoring, and I
19 believe that out of that 15 log entries there are something
20 like nine telephone calls and we propose to simply play it
21 from 1346, which is the time of the first interception,
22 through the telephone call listed at 1530, to give your
23 Honor some indication of what we consider to be a
24 representative sample of the types of telephone calls that
25 were coming in and the method in which the monitoring agents

1 rsg 46

2 or officers acted.

3 We feel that within that is a representative sample
4 of the types of telephone calls that will appear later and
5 in fact do appear later on.

6 THE COURT: How long is that, about 15 minutes you
7 say?

8 MR. FEFFER: I am not positive. Approximately
9 15 minutes.

10 THE COURT: Let me ask our expert time-keeper
11 to time how long the totality of this takes and you say you
12 are playing everything without selection?

13 MR. FEFFER: That is correct.

14 THE COURT: Will you do that, just from beginning
15 to end.

16 THE CLERK: Very well.

17 (Tape played.)

18 THE CLERK: 11 minutes 30 seconds.

19 THE COURT: The figure which I requested doesn't
20 mean anything to me now but I thank you.

21 Anything else on this?

22 MR. FEITELL: Could we have the length of the
23 time of the call which took place at 1526 between Sam and
24 Danny?

25 MR. FEFFER: I think it is approximately four minutes,

1 rsg 47

2 your Honor.

3 THE COURT: If you can't agree on that, since
4 you have this other list that you are going to get up for
5 me, put that on it jointly. If you agree that is fine.

6 Is there anything else on this minimization
7 problem?

8 MR. FEFFER: Just one comment I want to make on
9 the last call made prior to lunch.

10 That telephone call between Della Cava and this
11 woman Gene, again and again the government maintains that
12 conversations of that nature where he indicates he is going
13 uptown, he gives his location for the evening, his
14 whereabouts and also strange references to picking up my
15 work and things like that, this certainly gave the
16 monitoring officers more than ample reason to listen to
17 these conversations.

18 That chain or series of conversations between
19 Della Cava and this woman.

20 THE COURT: All right. Now, just to review the
21 remaining materials on the defendant's tape which is
22 Exhibit S for identification, we have agreed should be
23 summarized in the fashion we outlined before lunch and
24 which everybody is agreed and I would like that in the
25 form of a joint submission because I don't see any reason

1 rsq 48

2 why that can't be agreed upon.

3 As to any remaining argument, pro and con, about
4 the validity of the minimization, in the light of the
5 facts that we have learned in this hearing and perhaps
6 in the light of the latest decision of the circuit and
7 anything else that seems to counsel to be pertinent,
8 you can all get in the form of a brief memorandum and
9 I have alerted you, Mr. Feffer, to something that was
10 obvious anyhow, to the problem that I see the government
11 is confronted with of the continued eavesdropping on
12 Mr. Della Cava for a period of two weeks or more from the
13 time of his identification as somebody separate from
14 Della Valle to the time of the obtaining of what we have
15 been calling Diane's Bar Order Number 2.

16 You just write out your thoughts about that and
17 I am sure the defendants who have already stressed that
18 problem to me may want to add to what they have said and I
19 will read anything they put in on that subject.

20 We are approaching a probable trial date, whatever
21 the decisions may be on these suppression questions and I
22 think the papers that I have talked about thusfar ought
23 to be in on Tuesday the 10th, served and filed and I will
24 announce decisions on these suppression
25 problems as quickly as possible thereafter.

Mr. Swanzinger, who is a stickler for details tells me that Tuesday is the 9th and I accept that correction, make it Tuesday the 9th of October.

I don't believe I have given you a schedule for getting in requests to charge in this case and voir dire requests, have I?

MR. FEFFER: No, your Honor.

THE COURT: I will give it to you now.

Mr. Feffer, I want Government counsel to notify all defense counsel of this schedule, those who are not here and as well as those who are, requests to charge and any special voir dire requests should be in by October 10 -- make it October 11, which will be Thursday of next week.

We had talked from time to time about special problems of the voir dire in this case because some people thought there were difficulties possibly generated by publicity. I am grateful to say that I have the impression that that problem has diminished to the vanishing point.

We have been running these pretrial hearings on this case for many days and I have noticed gratefully that our friends from the press and the public have been absent in large numbers, so I suspect that if we all

1
2 proceed as I guess you all have, with circumspection and
3 some common sense, there will be no problem because the
4 difficulty that all of you may have anticipated seems not
5 to be materializing. But I will hear any requests anybody
6 has on that subject and deal with them suitably as we
7 proceed toward the trial date.

8 If there are any particular supplemental
9 things like the number of challenges and so on that you
10 want to have special attention given to, write them down
11 and I will consider them before we convene.

12 As of now, as I understand it, we are scheduled
13 for trial on Monday, October 15. I think we should plan to
14 adhere to that schedule and I think I will request
15 Mr. Feffer to take on another burden, and notify everybody
16 that we shall be rallying around at 9:45 on that morning
17 for any preliminary rulings of any kind that may be
18 necessary.

19 It is conceivable that the trial preceding yours
20 could fail to end punctually. I am doing everything
21 possible to see it does not obstruct this case but I ask
22 you to keep yourselves notified and we will keep you
23 closely informed as we can.

24 Are there any other pretrial things we can talk
25 about?

1 rsg 51

2 MR. SLOTNICK: Your Honor, with respect to the
3 minimization proposition, we have brought to Court today
4 Exhibits P and S for identification and the defendants
5 have more tapes. In other words, S only covers the first
6 nine of 18. Does your Honor order us to stop at S or shall
7 we do the whole thing as we have done it?

8 THE COURT: I am going to order the government
9 to sit with you. You have told me you would get up some
10 substantial representation of the tapes that would
11 portray your contentions. I also invited you to present
12 concretely any different views you may have of a substantial
13 nature with respect to these statistics the government
14 put in in a couple of exhibits.

15 I have told you a fair number of days ago that
16 if you put any concrete issues of that nature we would
17 proceed to resolve them. I haven't heard any.

18 I believe having sat with you this long that
19 there are not likely to be any between responsible
20 members of the bar. If the government says there are
21 726 calls are cut off and the other side says none were
22 cut off as the papers originally indicated, that is easy to
23 answer.

24 It turns out that we don't have any fat issues
25 of that kind and I am not surprised that we don't.

1 rsg 52

2 Then we get to the more refined points and if
3 somebody says it was 726 that were cut off and the other
4 side says 626, I am reasonably confident adult members of
5 our bar sitting together can resolve those numerical
6 discrepancies easily enough for the determination of the
7 issues of law that arise on a subject of this kind.

8 I haven't heard any precise issue of fact and I
9 think I have already notified defense counsel that unless
10 I hear them I will assume that the government's
11 representations which may have some small error in them
12 are close enough so that we don't have to fight about
13 them.

14 But if you are going to fight about them, please
15 let me know punctually and we will hear and determine
16 the fights.

17 MR. SLOTNICK: My contention with regard to the
18 statistics are that they indicate accurately the number of
19 phone calls that are cut off. However, their value is
20 less than what they perceive them to be for the simple
21 reason that there are no time limitations with regard to
22 the phone calls that are not cut off and I would treat
23 that accordingly. I think my memorandum would treat it
24 very simply.

25 I argue with the value of the piece of paper

1 rsg 53

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2 presented to the Court, not with the figures.

3 THE COURT: All right.

4 MR. SLOTNICK: I would suggest, your Honor,
5 most respectfully, that we have gone through several days
6 of minimization hearing, over a week, and we have a lot
7 of exhibits that have been marked for identification.
8 I think to complete the record they should be marked in
9 evidence.

10 THE COURT: Go ahead and mark them.
11 Nobody objects but put them in evidence.

12 MR. SLOTNICK: Do you have the logs, Mr. Feffer?

13 THE COURT: Go ahead and mark whatever you want
14 to mark.

15 MR. FEFFER: The logs are in evidence, all the
16 transcripts are in evidence. The tape which we played is
17 our next exhibit, Government's Exhibit 16.

18 (Government's Exhibit 16 received in evidence.)

19 THE COURT: Mr. Slotnick, in deference to your
20 concern as a proper technician, if you want to go around
21 the courthouse gathering up things marked for
22 identification that you want marked in evidence, our
23 clerk is an agreeable and cooperative marker and I don't
24 perceive there are going to be very big fights on this
25 interesting subject and I am not going to sit here while you

are all scattering around the room looking for pieces of paper. If you want it marked, collect it in a suitcase and let Mr. Swanzinger and me know and we will assemble and mark them quickly, all the things you like.

MR. SLOTNICK: Thank you very much, your Honor.

I had one other thought about marking things in evidence. I feel that it would be necessary for us to mark all 16 reels of tape in evidence. I think they are pertinent to the hearing and we both excerpted our tapes from the originals.

THE COURT: I am perfectly willing to agree with you and if you can get this circuit to listen to them, I am sure they will. Go ahead and mark them. That is in the category I just described. Bundle together everything and have it at our marking meeting and we will do it but I am not going to sit here now while you sort of collect your thoughts and think about things you are going to find and mark. We will do it all at once. We will meet five minutes earlier on October 15 and make sure that nothing is left unmarked.

MR. SLOTNICK: Thank you, your Honor.

One last thing, and I express confusion at this point, your Honor indicated that he would hold, if there be a trial and if there be a conviction, any taint hearing

2 which will be held at the end of the trial. That was
3 something your Honor had mentioned on our first day.

4 I have submitted some lengthy papers with regard
5 to leads and identity of witnesses and whatever of what
6 I consider illegal taint records and warrants. Will that
7 be held at the end of the trial or do you want me to
8 mention it specifically now?

9 THE COURT: I don't care if you mention it
10 specifically now or not because I want the record to be as
11 complete as possible but let me not lead you astray.

12 What I mean to convey to you is simply that if and
13 when there is a taint hearing it would follow rather than
14 precede the trial. I don't want you to leave here today
15 or at any time with the understanding that a taint hearing
16 is an inevitable feature of your future.

17 Whether there needs to be a taint hearing is a
18 question of what kind of showing somebody might make as to
19 the necessity for it and if necessity is shown by some
20 kind of prima facie demonstration of possible taint,
21 and if I am persuaded that it needs to be heard, then it will
22 be heard. But I am not now determining even there will ever
23 be one. Indeed, I would hope there would not be one.

24 MR. SLOTNICK: I would assume that. What I
25 am attempting to do is preserve the right if after some

1 rsg 56

2 of the evidence is in, and I see that things have flown
3 from what I consider to be illegalities, for example,
4 that a witness was discovered as a result of an illegality,
5 I am not foreclosed at some future time or even during the
6 course of the trial from objecting and putting in records
7 and perhaps a little voir dire before your Honor. That is
8 what I am concerned about.

9 THE COURT: Well, I don't think that anything
10 I have done was meant to foreclose you in that way and I
11 don't see giving your usual meticulous efforts could cause
12 you to have been foreclosed so if my statement of
13 purpose helps you, I don't mean to foreclose any of that.
14 I don't mean to stop for a few days for a voir dire either
15 on taint problems during the trial. But I do mean to
16 let you preserve that objection on any occasion when you
17 perceive that might be pertinent, and it is up to you to
18 reserve it. I don't know that your clients or you are
19 entitled to any more than that at this time.

20 MR. SLOTNICK: I think that is fair, your Honor.
21 My chief concern, and I don't think it is a great secret,
22 is that the witness Ramos was discovered as a result of
23 some illegality or some illegality may have been
24 exercised with regard to the witness Ramos and I would move
25 to suppress the witness Ramos at the appropriate time.

As of this moment I am not fully aware of all the factors concerning it but there will come a time when I am going to take a stand and position and make an objection. That is my concern.

THE COURT: Well, you say it is no secret. It has been a secret from me. You must assume, because it is true, I am absolutely ignorant about the things you have in mind. I am also ignorant about how you suppress a witness but I am interested to see what the propositions are in that regard.

Without being at all facetious if you think Ramos was discovered by an illegality, of course, you must make a record on that at any suitable time. If then in addition to your just having said it there is some factual basis for proceeding to determine taint someday, we may have to do that.

MR. SLOTNICK: Thank you, your Honor.

THE COURT: Anything else?

MR. FEITELL: With respect to the Toledo supplemental memorandum which your Honor asked for, I haven't gotten the minutes and we are told that we will have the balance of the minutes later today or tomorrow.

THE COURT: When would you want to get the memorandum in?

MR. FEITELL: Monday?

THE COURT: Monday is Columbus Day I am told.

MR. FEITELL: Tuesday.

THE COURT: Make it Tuesday.

MR. FEITELL: Tuesday will be fine.

THE COURT: Anything else?

MR. MC ALEVY: Just one thing, your Honor, with respect to the petition we mentioned this morning with respect to Mr. Cassese. I would also like to have that marked in evidence.

THE COURT: Not particularly in evidence but you may have it marked.

MR. MC ALEVY: I want it marked in evidence.

THE COURT: So it may be for any other tribunal.

(Defendant's Exhibit T marked for identification.)

MR. SLOTNICK: One last thing, your Honor, comes to mind. The Government was kind enough to consent and your Honor kind enough to decree that the defendant did not have to report in during the period of the Jewish Holidays. In view of the fact that the trial will commence October 15 and the defendants have been exactly faithful to their obligations, I would ask that they be allowed to continue on with the course whereby it will be not necessary for them to sign in every day.

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MR. PEPPER: No objection, your Honor.

THE COURT: All right, then with the government's consent, that is granted.

We will see you on the 15th.

(Hearing closed.)

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4	Michael Santangelo	345	360	409	
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17	<u>Government</u>	<u>Identification</u>	<u>Evidence</u>
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19	5	545/762	765
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EXHIBIT INDEX

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Defendant

Identification

Evidence

O

P

O

R

1284

1463

1209

177

Handwritten notes and signatures, including "Foley" and "Sullivan".

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as the testimony is about to begin, could the Court make sure that all witnesses are excluded?

THE COURT: Yes. That applies to all witnesses, I assume you will all follow the rule.

(Recess.)

(Jury present.)

MR. FELD: The government calls Robert Johnson.

ROBERT E. JOHNSON, called as a witness on behalf of the government, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. FELD:

Q Mr. Johnson, what is your occupation?

A I am employed as a special agent with the Drug Enforcement Administration.

Q How long have you been with that agency?

A Four years.

Q Where are you currently assigned?

A To the Republic of Singapore.

Q What are your duties?

A My duties in Singapore are with international narcotic investigations.

Q Do you know an individual named Earl Simms?

1
2 A I do.

3 Q Do you know an individual named George Harris?

4 A I do.

5 Q Is Mr. Harris present in the courtroom today?

6 A Yes, he is.

7 Q Will you identify him?

8 A The individual with the beard in the blue and
9 pink sport shirt.

10 MR. FELD: May the record reflect that the witness
11 correctly identified Defendant George Harris.

12 Q Directing your attention to November 5, 1970,
13 were you engaged in the performance of your official
14 duties?

15 A I was.

16 Q On that date were you conducting surveillance at
17 the Detroit Metropolitan Airport?

18 A I was.

19 Q Approximately --

20 MR. LEVENSON: I object at this point to the
21 continued leading of this witness. I think we have gone
22 far enough.

23 THE COURT: Well, do you object to the question
24 just asked or the next one?

25 MR. LEVENSON: The one about to be asked.

THE COURT: Let me hear it first.

Q At 6:10 p.m. where were you positioned?

A At 6:10 I was positioned at the American Airlines boarding area at the Detroit Metropolitan Airport.

Q What did you observe at that time?

A At approximately 6:10 I observed Earl Simms approach the ticket counter, present his ticket, have it validated and go into the boarding area and he was the first person aboard American Airlines Flight No. 630 for New York.

Q What if anything did Mr. Simms have at the time?

A A grey briefcase, attache case.

Q At approximately 6:20 p.m. what, if anything, did you observe?

A I observed George Harris come to the boarding area, present his ticket, have it validated and he was the last person to board American Airlines Flight 634 New York.

Q Did you continue to maintain surveillance of that flight until it departed?

A Yes, I did.

Q Approximately what time did it depart?

A It departed approximately 6:30 p.m.

Q Directing your attention to December 8, 1970, were you then conducting surveillance at the airport?

A Yes, I was.

Q On the afternoon of that date where were you positioned?

A In the afternoon of that date I was in the short term parking lot. I had just discovered a white over blue Cadillac ElCabellaero that to my personal knowledge had been used by Earl Simms.

Q To whom did that Cadillac belong?

A It was registered to Lester Ramsey.

Q Did your surveillance continue into the evening of December 8?

A Yes, it did.

Q Approximately 9:20 p.m. what, if anything, did you observe?

A I was on surveillance in my official government vehicle parked at the curb across the street from the short term parking lot.

I observed two men enter the parking lot at the far end, walk over to the Cadillac and I immediately recognized them as Earl Simms and Eugene Brown.

Q What happened at that time?

A They apparently had a flat tire and were changing

1
2 their tire.

3 Q What, if anything, did you observe?

4 A I observed them changing their tire and
5 at that time I was joined by Special Agent Kostecke
6 and Michigan State Police Detective Chester Romatowsky.

7 Q Did you confer at that time?

8 A Yes, I did.

9 Q What did they do?

10 A They decided they would go back down to the
11 luggage hold area and after they left I moved my government
12 car forward about a hundred fifty feet where I was out of
13 Simms and Brown's line of sight and still able to
14 observe them.

15 Q What did you do?

16 A Well, at this point Simms and Brown left the
17 short-term parking lot and drove past me. I established
18 moving surveillance on them and followed them around the
19 airport and down to the lower level luggage loading area
20 at which time they stopped the car and opened the trunk
21 and Earl Simms was in the process of placing a maroon,
22 redish brown and black box into the trunk of his car when
23 Agent Kostecke and Detective Romatowsky placed them under
24 arrest.

25 Q After they were placed under arrest tell us what

1 you did with the box and with the people whom you arrested?

2 A I retrieved the box from the trunk. I escorted --
3 we had four defendants, two women and two men and I
4 escorted them to the Michigan State Police office on the
5 mezzanine floor of the Metropolitan Airport Terminal and
6 as soon as Detective Romatwosky and Agent Kostecke arrived
7 I opened the box, observed some shoes and clothing and
8 a package wrapped in a gift wrap paper. I removed the
9 package, opened the gift wrap and inside the gift wrap
10 package I found a plastic bag containing a white powder.
11

12 Q What did you then do?

13 A I placed the gift wrapped package with the
14 plastic bag containing the white powder into a locked
15 cabinet and relocked it and retained the key.

16 Q Did there come a time when you removed this bag
17 containing the powder.

18 A Yes, sir. Later in the evening I removed the bag
19 from the cabinet and took it to the then Bureau of
20 Narcotics and Dangerous Drug Regional Office in Detroit,
21 took it into my office and with Agent Kostecke I field
22 tested the package and got a positive reaction for an opiate
23 derivative.

24 I then weighed the package and initialed it and
25 removed the actual outer bag and repacked the white powder

1
2 into another plastic bag and placed it into a locked
3 cabinet.

4 Q Did you initial that bag?

5 A Yes, and I placed this in a lock-seal envelope
6 and placed it in the vault.

7 Q Did there come a time when you removed it from
8 the vault?

9 A Yes, the next day I removed it from the vault,
10 took it to the post office and mailed it to the regional
11 laboratory in Chicago, special delivery, return receipt
12 requested.

13 MR. FELD: May the record reflect I have in
14 my hand two evidence envelopes stapled together and I am
15 now unstapling them. One of them is empty and I would like to
16 have it marked Government's Exhibit 1A for identification.

17 (Government's Exhibit 1A marked for
18 identification.)

19 MR. FELD: And the envelope which is in a lock-
20 seal condition I would like to have marked Government's
21 Exhibit 1B for identification.

22 (Government's Exhibit 1B marked for identification.)

23 MR. FELD: May the record reflect I am
24 now cutting open Government's Exhibit 1B for identification
25 and removing the contents which I request be marked

as Government Exhibit 1C for identification.

(Government's Exhibit 1C marked for identification.)

Q I show you Government's Exhibit 1A for identification, 1B and 1C for identification.

I ask you to look at 1A and 1C for identification and tell us whether you can identify them.

A Yes, sir. 1A is an evidence envelope made out by me in the Detroit Regional Office on December 8, 1970.

Government Exhibit 1C is the white powder removed from the gift wrapped package and the original plastic container and initialed by me.

Q That 1C is that what you referred to in your testimony, is that correct?

A Yes, sir.

MR. FELD: I have no further questions of this witness.

THE COURT: Is there cross examination?

Let us go in the order listed.

MR. STONE: I would be glad to go first but I have no questions.

THE COURT: Let us go in the order in which you are named.

CROSS EXAMINATION

BY MR. SLOTNICK:

Q You were involved in an investigation as to whether drugs were coming into the Michigan Area from New York, is that correct?

A Yes, sir.

Q During what period of time did you work on this investigation?

A I would say we started --

Q Not we, you.

A Yes, sir. I started about February or March 1970 and I ceased my portion of this investigation in November, 1971.

Q November of 1971. From February of 1970 to November 1971, did you ever hear of the name of John Capra?

A No, sir, I did not.

Q Did you ever see my client?

A No, sir, I did not.

Q During that period of time which you worked on the investigation you had what are known as confidential informants or people feeding you information, is that correct?

A Yes, sir, that is true.

Q Did they ever mention the name John Capra?

A No, sir, they did not.

Q As a matter of fact, all during the period of time that you worked on this investigation you never heard nor did you know of the name of John Capra, is that correct?

A That is correct.

MR. SLOTNICK: Thank you.

THE COURT: Mr. Mc Alevy.

BY MR. MC ALEVY:

Q Agent Johnson, during that time period you just testified to when you were working on this Michigan investigation, did you ever hear of the name of Leo Guarino?

A No.

Q From any person?

A That is correct, nobody.

Q To your personal knowledge do you know if Mr. Guarino had anything to do with this transaction?

A Not of my personal knowledge.

MR. MC ALEVY: That is all.

MR. FEITELL: No questions.

BY MR. LEVENSON:

Q Agent Johnson, you indicated that on November 5

1 when you saw Mr. Simms and Mr. Harris board this plane one
2 of them was carrying a grey suitcase?
3

4 A Briefcase.

5 Q Can you describe the briefcase?

6 A It was a grey attache case similar to a
7 Samsonite type with a hard top.

8 Q Quite a common case?

9 A Yes, very common.

10 Q You say that at the time you observed them
11 on December 8 they had a flat tire?

12 A Yes, sir.

13 Q Fixing a flat tire?

14 MR. BLACKSTONE: I object to the form of the
15 question, observed them. I don't know what the question
16 means.

17 Q You indicated that you observed Simms and Brown?

18 A Yes, sir.

19 Q Coming back off a plane?

20 A I observed them entering the parking lot.

21 Q Do you know how their tire got flat?

22 A Pardon me.

23 Q Do you know how their tire got flat?

24 A No, sir, I don't.

25 Q You say they were carrying something?

1
2 A Not at the time I observed them, no, sir.

3 Q Did you ever observe them putting anything
4 in the trunk of their car, say Simms and Brown?

5 A Yes, sir, at the baggage loading area.

6 Q What was it that they put in their car?

7 A Putting in a redish maroon and black box.

8 Q Did you retrieve that box?

9 A Yes, sir, I did.

10 Q Is it available at the present time?

11 A It is in Detroit right now and I understand it is
12 being mailed in.

13 Q Would you describe the box? How large was it?

14 A To the best of my recollection I would say the
15 box was about this long, about that wide and that high
16 (indicating) to the best of my knowledge.

17 Q You say red and brown. What was the material?

18 A Cardboard.

19 Q Do you know an individual named -- or let us
20 say during the course of the investigation in 1970, did you
21 ever come across an individual by the name of Robinson?

22 A Yes, sir.

23 Q Was this from the New York Task Force?

24 A Yes, sir.

25 MR. LEVENSON: I have no further questions.

BY MR. BLACKSTONE:

Q Mr. Johnson, you testified concerning a surveillance on two separate dates, one was November 5, 1970 and the second date was December 10, 1970; is that correct?

A Yes, sir.

Q It is on November 5, 1970 that you made observation of George Harris, is that correct?

A Yes, sir.

Q No observation of George Harris was made on December 10?

A No, sir, none.

THE COURT: Do you both mean December 10 or 8?

THE WITNESS: December 8th, I am sorry.

MR. BLACKSTONE: December 8th. We both had the wrong date.

Q December 8. And then there was another date which is November 5, 1970, the observations that you made on Mr. Harris entering or boarding a flight?

A Yes, November 5, 1970.

Q And on December 8th you did not make any observations of Mr. Harris?

A None whatsoever, no, sir.

Q Now, did you have occasion after you observed

Mr. Harris -- by the way, Mr. Harris entered and boarded that flight separately from Mr. Simms, is that correct?

A That is correct, yes, sir.

Q Did you have occasion after the plane left to check with the ticket office to determine how it was that Mr. Harris was on the flight that he had?

A We checked the ticket with the ticket counter there and Mr. Simms was flying economy and Mr. Harris was on stand-by, a stand-by ticket and I believe he wound up flying first class.

Q According to the ticket information they were flying separately?

A Yes, sir.

Q Also in your looking at the ticket records did it also reflect Mr. Harris was flying under his actual name?

A Yes, sir.

MR. BLACKSTONE: I have no further questions.

MR. FEITELL: Your Honor, will your Honor reconsider an application for me to ask a few questions of this witness?

THE COURT: Yes, surely.

BY MR. FEITELL:

Q Mr. Johnson, you said you performed a field

test?

A Yes, sir.

Q Tell us what test you performed?

A A Marquis reagent.

Q Can you tell us had you had any training in performing narcotic testing in the field?

A Yes, sir, field testing.

Q Where did you receive the field testing training?

A At the agents basic school in Washington, D.C.

Q Prior to your conducting a test on the particular date that you did in this case, had you conducted a field test before?

A Yes, sir.

Q You had conducted Marquis field testing?

A Yes, sir.

Q You said that in conducting this test the result of the test indicated positive for an opiate?

A An opiate derivative.

Q Did you perform any other type of test?

A No, sir.

Q You weren't able to determine the nature of the opiate derivative?

A No, sir.

Q Could it have been any one of a number of opiates?

A It could have been heroin or morphine.

Q When you used the term opiate, what do you mean by that?

A That is a heroin or morphine derivative, from opium, an opiate.

Q Are you familiar with the Mayer reagent test?

A What?

Q M-a-y-e-r?

A No, sir, I don't believe I am.

Q Never used it?

A No, sir.

Q Have you ever heard of it?

A Not to my knowledge, no, sir.

Q What about the Froehde solution test?

A No.

Q F-r-o-e-h-d-e?

A No, sir.

Q Solution test?

A No, sir.

Q Never heard of that either?

A No, sir.

Q Did you ever hear of the Sernik test?

A No, sir.

Q Tell us how you performed the test that you did.

A You take a small amount of the substance into a small vial which contains the Marquis reagent, mix the two, take enough of the substance to cover the tip of a paper clip and put it in and stir it up and if it turns dark purplish color you have got an opium derivative.

Q What happened in this case?

A It turned dark purple.

Q Did it remain that way?

A Yes, sir.

Q Throughout?

A Yes, sir.

Q Did you preserve it?

A No, sir.

Q What did you do with it?

A Threw it away.

Q Threw it away?

A Yes, sir.

Q You mean you made a determination and you didn't hold onto it?

A I was making a field test.

Q Can you answer yes or no? Do you understand my question?

A No, repeat it.

1
2 Q You decided to get rid of the material that
3 you just tested?

4 A I got rid of the test material.

5 Q Do you understand my question?

6 A No, I don't.

7 Q I will reframe it for you.

8 Now, the Marquis reagent is a liquid?

9 A Yes.

10 Q What is it composed of?

11 A I don't know offhand.

12 Q They didn't teach you that in school?

13 A I am sure they did.

14 Q You forgot?

15 A Yes, sir.

16 Q What color?

17 A Clear liquid.

18 Q You took a paper clip or pin of some sort?

19 A Paper clip.

20 Q What did you do with it?

21 A Put a little bit of the powder on the end of it.

22 Q Where did you get the powder?

23 A From the bag.

24 Q When you did that were there other people present?

25 A Yes, sir.

2 Q Who?

3 A Special Agent Kostecke.

4 Q When did you perform this test?

5 A On the -- late at night on the 8th of December,
6 I believe.

7 Q Now, you testified that you took the powder
8 and introduced it into the vial?

9 A Yes, sir.

10 Q Is that a prepackaged vial?

11 A Yes, sir, it is prepackaged.

12 Q Contained in the test kit?

13 A Yes.

14 Q Did you have a test kit with you?

15 A Yes, sir.

16 Q Do you have that test kit with you today?

17 A No, sir.

18 Q Where is the test kit?

19 A It has been three years. I have no idea.

20 Q You didn't preserve that either?

21 A No, sir.

22 Q The liquid that you introduced the powder into,
23 what did you do with the liquid?

24 A Pardon me.

25 Q What did you do with the liquid after you introduced

2 the powder into it.

3 A Held it in the vial.

4 Q You looked at it?

5 A Yes, sir.

6 Q What did you do with the liquid after you
7 concluded making your test?

8 A Threw it away.

9 Q You didn't take a photograph of it?

10 A No, sir.

11 Q Do you know of any color photograph that you
12 could have preserved of that indicating color?

13 A No, sir.

14 Q Of the liquid and substance mixed together?

15 A No.

16 Q You don't?

17 A No, sir.

18 Q Did anybody else perform any testing?

19 A I don't believe so, no, sir -- that night?

20 Q That night.

21 A No, sir.

22 Q When you had removed the bag initially from the
23 gift box, it was wrapped. Could you describe the bag this
24 substance was in?

25 A It was a plastic bag, ordinary plastic bag.

Q Do you know where that bag is today?

A I believe it is in evidence in the Michigan State Police Laboratory, probably, in Detroit for latent fingerprint tests.

Q You are not sure?

A No, I am not sure.

Q Did you testify before that when you unpackaged this stuff or materials that you were examining you removed the materials from the very bag, the initial bag in which it was contained, is that so?

A Yes, sir.

Q You transferred it to another bag?

A Yes, sir.

Q What did you do with the initial bag that you had?

A Submitted it to the Michigan State Police Laboratory for latent prints.

Q Did you ever get a report back?

A Yes, sir.

Q Do you have a copy of it?

A Not with me, no, sir.

Q Did you read the report?

A Yes, sir.

Q Were any prints lifted?

A No, sir.

Q It is your surmise or speculation that this bag is somewhere out in the Detroit area?

A Yes, sir.

Q Now, what kind of substitute bag did you use?

A Plastic bag.

Q Where did you get that from?

A We keep them in the office.

Q Where do you get those from?

MR. FELD: Objection, your Honor. Does he want the name of the manufacturer of the bag? It is irrelevant.

THE COURT: What are you asking after he says he kept it in his office.

MR. FEITELL: Where he gets the substitute type bags from. I have an objective here, there is a purpose.

THE COURT: I know but he says it is irrelevant. I will allow it. Do you know where the bags come from.

THE WITNESS: No, sir, I don't.

Q This is very much like would you say the saran type bags you get in the supermarket? Is that what they are like?

A Similar, yes.

Q They can be gotten anywhere?

A Yes, sir.

3/4

MR. FRITELL: May I see Exhibits 1A, B and C for identification, please?

(Handed to counsel.)

Q Is 1A the bag that you initially filled out in Detroit, 1A for identification?

A Yes, sir, this is the evidence envelope.

Q When was the writing placed upon this envelope, at that time?

A Yes, sir.

Q When it was made out?

A Yes, sir.

Q Prior to mailing it somewhere?

A Yes, sir.

Q All that you could tell was this was some undefined type of opiate?

A That is correct.

Q Did you write that down on the bag, yes or no?

A I don't believe so, sir.

Q Did you write down the words undefined opiate or unknown opiate?

A No, sir.

Q Take a look at it and answer the question yes or no.

A I wrote heroin, sir.

Q Did you answer my question yes or no?

MR. FELD: I object to this.

THE COURT: Yes, sustained.

If you believe the exhibit says heroin it wouldn't help to ask him to answer some other question yes or no -- let me finish.

MR. FEITELL: I am sorry.

THE COURT: All right, I don't need to finish. Go ahead.

Q You didn't know for sure if it was heroin, but you wrote down heroin?

A Yes, sir, that is correct.

Q This bag, this is the bag, that is 1C for identification, that is the bag that you utilized to repack the materials?

A Yes, sir.

Q It is somewhat heavier than a saran wrap? Are you familiar with saran wrap?

A Yes, sir, it is heavier.

Q Looking at this bag did you write anything on this bag?

A I initialed it.

Q You initialed it?

A Yes, sir.

Q Could you show me your initials?

A I believe it is up under the tape. I will try to find it.

Yes, here they are, partially wiped off.

Q Pardon me?

A Partially rubbed off. "REJ."

Q Show me where that is.

A Here is the J and the rest of it is partially obliterated on there. Part of the R.

Q You are telling me you can identify that as your own initials?

A Yes, sir.

Q Did you initial this bag in any other way?

A No, sir.

Q Now, after you made your search up at the state police office and you removed the contents from the gift bag was it then that you switched packages or some other time?

A Some other time.

Q What did you do right after you took the package out of the gift pack?

A Put it in a locked cabinet, locked the cabinet and retained the key.

Q Is this your office?

A No, the state police office.

Q Did you have the key to this cabinet when you came into the place?

A No, sir.

Q What type of cabinet, just like an ordinary filing cabinet?

A Yes, sir.

Q Such as you see in anybody's office?

A Yes.

Q In the United States Attorney's office?

A Yes.

Q Metal?

A Yes, sir.

Q Operated by a small key?

A Yes, sir.

Q Where did you get the key to open up that file cabinet?

A I don't recall from whom I got the key exactly, sir.

THE COURT: We are going to stop for lunch now, gentlemen. Let's come back at 2:15 please.

(Luncheon recess taken until 2:15 p.m.)

